

# **Exhibit 3**

## **Scott Turner Deposition**

# **Video Deposition of Scott Turner**

July 25, 2024

Ross v. Knauf Insulation, Inc., et al.

3:23-CV-00284-RAH-SMD



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<p>Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE MIDDLE DISTRICT OF ALABAMA</p> <p>3 EASTERN DIVISION</p> <p>4</p> <p>5 JOHN ROSS,</p> <p>6 Plaintiff,</p> <p>7 vs. CASE NO: 3:23-CV-00284-RAH-SMD</p> <p>8 KNAUF INSULATION, INC.,</p> <p>9 et al.,</p> <p>10 Defendants.</p> <p>11 *****</p> <p>12</p> <p>13 REMOTE VIDEOTAPED DEPOSITION OF</p> <p>14 SCOTT L. TURNER</p> <p>15</p> <p>16 July 25, 2024</p> <p>17 1:19 p.m. CST</p> <p>18</p> <p>19 Location:</p> <p>20 Cite's Virtual Meeting Room</p> <p>21</p> <p>22</p> <p>23 Tracye Sadler Blackwell, ACCR No. 294</p>	<p>Page 3</p> <p>1 EXAMINATION INDEX</p> <p>2</p> <p>3 SCOTT L. TURNER</p> <p>4 BY MS. BAUGH 7</p> <p>5 BY MS. DYE 147</p> <p>6</p> <p>7 DEFENDANT'S EXHIBIT</p> <p>8</p> <p>9 EX 1 June 3, 2024 Report 8</p> <p>10</p> <p>11 PLAINTIFF'S EXHIBITS</p> <p>12</p> <p>13 EX 1 Heartland's Responses to Knauf's 148</p> <p>14 First Interrogatories</p> <p>15 EX 2 Heartland Express' Responses to 152</p> <p>16 Interrogatories and Requests for</p> <p>17 Production Propounded by John Ross</p> <p>18</p> <p>19 EX 3 List of Complaints 155</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>
<p>Page 2</p> <p>1 APPEARANCES OF COUNSEL (via Zoom)</p> <p>2</p> <p>3 ON BEHALF OF THE PLAINTIFF:</p> <p>4 Ms. Victoria Dye, Esq.</p> <p>5 MORGAN &amp; MORGAN BIRMINGHAM, PLLC</p> <p>6 216 Summit Boulevard</p> <p>7 Suite 300</p> <p>8 Birmingham, Alabama 35243</p> <p>9</p> <p>10 ON BEHALF OF THE DEFENDANT KNAUF INSULATION, INC.:</p> <p>11 Mr. Patrick L.W. Sefton, Esq.</p> <p>12 CAPELL &amp; HOWARD, P.C.</p> <p>13 Attorneys at Law</p> <p>14 150 South Perry Street</p> <p>15 Montgomery, Alabama 36104</p> <p>16</p> <p>17 Ms. Christina Baugh, Esq.</p> <p>18 BARNES &amp; THORNBURG, LLP</p> <p>19 3340 Peachtree Road NE</p> <p>20 Suite 2900</p> <p>21 Atlanta, Georgia 30326-1092</p> <p>22</p> <p>23 ON BEHALF OF THE INTERVENOR:</p> <p>24 Mr. Christopher Graves, Esq.</p> <p>25 MARKOW WALKER, P.A.</p> <p>26 265 North Lamar Boulevard</p> <p>27 Suite I</p> <p>28 Oxford, Mississippi 38655</p> <p>29</p> <p>30 ALSO PRESENT:</p> <p>31 Mr. Wes Sparkman, Videographer</p> <p>32</p> <p>33</p>	<p>Page 4</p> <p>1 STIPULATIONS</p> <p>2 It is hereby stipulated between counsel</p> <p>3 representing the parties that the deposition of</p> <p>4 SCOTT L. TURNER is taken pursuant to the Federal</p> <p>5 Rules of Civil Procedure and that deposition may be</p> <p>6 taken before Tracye S. Blackwell, CCR, RPR, without</p> <p>7 the formality of a commission, that objections to</p> <p>8 questions other than objections as to the form of</p> <p>9 the question need not be made at this time but may</p> <p>10 be reserved for a ruling at such time as the said</p> <p>11 deposition may be offered in evidence or used for</p> <p>12 any other purpose by either party provided for by</p> <p>13 the Statute.</p> <p>14 It is further stipulated between counsel</p> <p>15 representing the parties in this case that the</p> <p>16 filing of said deposition is waived and may be</p> <p>17 introduced at the trial of this case or used in any</p> <p>18 other manner by either party hereto provided for by</p> <p>19 the Statute regardless of the waiving of the filing</p> <p>20 of the same.</p> <p>21 It is further stipulated between the parties</p> <p>22 hereto and the witness that the signature of the</p> <p>23 witness to this deposition is hereby waived.</p>

<p>Page 5</p> <p>1 THE VIDEOGRAPHER: We are on the 2 record. Today is Thursday, 3 July 25th, 2024, at 4 approximately 1:19 p.m. 5 Central Standard Time. 6 My name is Wesley 7 Sparkman, and the court 8 reporter is Tracye Blackwell. 9 We're here on behalf of Cite 10 Court Reporting of Montgomery, 11 Alabama. 12 This is the video 13 deposition of Scott L. Turner, 14 which was noticed by Patrick 15 Sefton for case Ross v. Knauf 16 Insulation, Inc., et al., in 17 the United States District 18 Court, Middle District of 19 Alabama, Eastern Division, 20 Case Number 21 3:23-CV-00284-RAH-SMD. 22 Counsel, please identify 23 yourselves for the record</p>	<p>Page 7</p> <p>1 SCOTT L. TURNER 2 The witness, after having first affirmed to 3 speak the truth, the whole truth and nothing but 4 the truth, testified as follows: 5 EXAMINATION 6 BY MS. BAUGH: 7 Q. Good afternoon, Mr. Turner. 8 <b>A. Good afternoon.</b> 9 Q. I see that you have some papers there in 10 front of you. What do you have in print in 11 front of you? 12 <b>A. Sure. A copy of my report.</b> 13 Q. Okay. And that would be -- I'm sorry? 14 <b>A. The report you-all have.</b> 15 Q. Okay. So the one dated June 3rd, 2024. Is 16 that correct? 17 <b>A. That's correct.</b> 18 Q. All right. And I'm actually going to mark 19 that as Defense Exhibit 1 for this 20 deposition. 21 (Defendant's Exhibit 1 was marked 22 for identification.) 23 Q. I'm going to put it up on the screen, and</p>
<p>Page 6</p> <p>1 starting with the plaintiff. 2 MS. DYE: Victoria Dye for the 3 Plaintiff. 4 MS. BAUGH: Christina Baugh for 5 Defendant Knauf Insulation. 6 MR. GRAVES: Christopher Graves 7 for the Intervenor Heartland 8 Express, Inc. 9 MR. SEFTON: Pat Sefton for Knauf 10 Insulation. 11 THE VIDEOGRAPHER: Will the court 12 reporter please administer the 13 oath to the witness. 14 15 (Witness affirms.) 16 17 THE COURT REPORTER: Usual 18 stipulations? 19 (Counsel agree.) 20 21 22 23</p>	<p>Page 8</p> <p>1 we can also -- I'm glad that you do have it 2 there to follow along because there may be 3 times when you want to jump to a different 4 section as well. 5 <b>A. Sure.</b> 6 Q. So for the purposes of marking the exhibit, 7 this is Defense Exhibit 1. Does this 8 appear so far to be correct, Mr. Turner, as 9 your report dated June 3rd? 10 <b>A. Yes, ma'am.</b> 11 Q. All right. And your report on that date is 12 28 pages long; correct? 13 <b>A. Let me just confirm that. I believe it</b> 14 <b>was, yes, but let me just confirm that real</b> 15 <b>quick.</b> 16 <b>28. And actually -- yeah, 28 plus my</b> 17 <b>CV as well.</b> 18 Q. Yes. I apologize. The substantive portion 19 of your report that contains your opinions 20 is the 28-page aspect. Is that correct? 21 <b>A. That's correct.</b> 22 Q. All right. And shown on the screen on 23 page 28, that is your signature there. Is</p>

<p>Page 9</p> <p>1 that correct?</p> <p>2 <b>A. Affirmative.</b></p> <p>3 Q. Okay. Thank you.</p> <p>4 Also here on page 28, Mr. Turner, I see</p> <p>5 under references you have some sections out</p> <p>6 of the Federal Motor Carrier Safety</p> <p>7 Regulations Act. Is that accurate?</p> <p>8 <b>A. That's correct.</b></p> <p>9 Q. Okay. Did you rely on any other of the</p> <p>10 regulations out of the Federal Motor</p> <p>11 Carrier Safety Regulations other than those</p> <p>12 that are cited here?</p> <p>13 <b>A. Well, predominantly 392.9, but we look at</b></p> <p>14 <b>all of the regulations in concern --</b></p> <p>15 <b>concerning a commercial motor vehicle crash</b></p> <p>16 <b>or incident or whatever it may be. And it</b></p> <p>17 <b>doesn't mean necessarily we're going to</b></p> <p>18 <b>incorporate them into a report, but I can</b></p> <p>19 <b>tell you that 392.9 certainly was a seminal</b></p> <p>20 <b>regulation in the report.</b></p> <p>21 Q. Okay. But there are other regulations</p> <p>22 listed. You've got, for instance, 390.3,</p> <p>23 390.5. But overall the ones that you've</p>	<p>Page 11</p> <p>1 to -- or that you did utilize for your</p> <p>2 opinion that are not listed here on</p> <p>3 page 28?</p> <p>4 <b>A. One more time, please. I'm sorry.</b></p> <p>5 Q. Absolutely.</p> <p>6 Were there any Federal Motor Carrier</p> <p>7 Safety Regulation sections that you relied</p> <p>8 on in rendering your opinion in this case</p> <p>9 that are not listed on page 28?</p> <p>10 <b>A. Well, if it's not in the report -- if it's</b></p> <p>11 <b>not in the body of the report, then we</b></p> <p>12 <b>would not have. But anything that -- any</b></p> <p>13 <b>regulations under FMCSR that we did rely</b></p> <p>14 <b>upon is published in the report.</b></p> <p>15 But as you see, some of these in</p> <p>16 here -- like 391.15, you know, that's</p> <p>17 getting into a driver being, you know,</p> <p>18 prohibited. So, you know, it's not</p> <p>19 necessarily going to be something that we</p> <p>20 listed or not, but what I'm just saying is</p> <p>21 that any regulation that we use is in the</p> <p>22 body of the report predominantly and 392.9</p> <p>23 most importantly.</p>
<p>Page 10</p> <p>1 relied upon for the rendering of your</p> <p>2 opinions in this case, those are the ones</p> <p>3 that you have listed on page 28 of your</p> <p>4 report?</p> <p>5 <b>A. Sure. But, you know, let me just put it</b></p> <p>6 <b>this way. So, for example, you have 390.5.</b></p> <p>7 <b>You want to get the definition of employee</b></p> <p>8 <b>and employer, commercial motor vehicle in</b></p> <p>9 <b>terms of non-CDL. You would find those</b></p> <p>10 <b>under definitions in there.</b></p> <p>11 So there's a -- 383 is -- 383.111, for</p> <p>12 example, is listed there too. That's the</p> <p>13 20 points of required knowledge of a</p> <p>14 commercial motor vehicle driver.</p> <p>15 So, you know, again, we add them -- we</p> <p>16 add these into there. It doesn't</p> <p>17 necessarily mean that we utilize them in</p> <p>18 the body of the report, but it's something</p> <p>19 that we always consider. And we like to</p> <p>20 make sure we list it there for your</p> <p>21 purposes.</p> <p>22 Q. Okay. Were there any of the Federal Motor</p> <p>23 Carrier Safety Regulations that you needed</p>	<p>Page 12</p> <p>1 Q. All right. Did you rely upon any other</p> <p>2 standards in rendering your opinion?</p> <p>3 <b>A. No. Just get a confirmation of weather and</b></p> <p>4 <b>that's about it.</b></p> <p>5 Q. Okay. Did you rely upon any other</p> <p>6 authoritative sources for rendering your</p> <p>7 opinion?</p> <p>8 <b>A. Not insofar as I recall.</b></p> <p>9 Q. Okay. Did you speak with Mr. Ross prior to</p> <p>10 preparing your report?</p> <p>11 <b>A. No, ma'am. Only read his deposition.</b></p> <p>12 Q. Did you watch his deposition video?</p> <p>13 <b>A. No, ma'am. I typically refrain from doing</b></p> <p>14 <b>that. I prefer just to read the deposition</b></p> <p>15 <b>because it all comes out equal at that</b></p> <p>16 <b>point. People's words are important to me.</b></p> <p>17 Q. Okay. So what I'd like to do,</p> <p>18 Mr. Turner -- and as I said, I'll put them</p> <p>19 on the screen just for the sake of making</p> <p>20 sure we're looking at the same thing. But,</p> <p>21 obviously, please look at any part of your</p> <p>22 report that you think is necessary to</p> <p>23 answer our questions as we go through this.</p>

<p>Page 13</p> <p>1 Just let me know where it is that you're</p> <p>2 looking if you're citing something or</p> <p>3 referencing something different than what I</p> <p>4 am referencing.</p> <p>5 <b>A. Sure.</b></p> <p>6 Q. Is that agreeable?</p> <p>7 <b>A. Yes.</b></p> <p>8 <b>Oh, by the way -- by the way, ma'am,</b></p> <p>9 <b>just so you're aware, I do have -- just to</b></p> <p>10 <b>make sure that you're aware of that, I do</b></p> <p>11 <b>have the then current Federal Motor Carrier</b></p> <p>12 <b>Safety Regulations in front of me. That's</b></p> <p>13 <b>another document that I do have with me as</b></p> <p>14 <b>well. So I just want to make sure you're</b></p> <p>15 <b>aware of that.</b></p> <p>16 Q. And if you reference that or different</p> <p>17 sections, just let me know that you're</p> <p>18 referencing it, but that's -- that's</p> <p>19 acceptable.</p> <p>20 <b>A. Sure.</b></p> <p>21 Q. All right. So where I'd like to start with</p> <p>22 you, if I may, Mr. Turner, is starting on</p> <p>23 the third page after we get past your</p>	<p>Page 15</p> <p>1 <b>A. Well, you're on the same --</b></p> <p>2 Q. -- the page numbers show that.</p> <p>3 <b>A. Yeah. Your images are covering up the page</b></p> <p>4 <b>numbers on me, so I don't see -- I can tell</b></p> <p>5 <b>you that if you look at Assignment 4.0 --</b></p> <p>6 <b>it's assignment, then it's two lines, and</b></p> <p>7 <b>it has the undersigned -- it's exactly what</b></p> <p>8 <b>you have there.</b></p> <p>9 Q. Right. So do you see where it says apply</p> <p>10 the knowledge, experience, and education?</p> <p>11 Do you see that?</p> <p>12 <b>A. Oh, okay. You're jumping in the middle of</b></p> <p>13 <b>a paragraph. Okay. I apologize.</b></p> <p>14 Q. Yes.</p> <p>15 <b>A. I'm always looking at the beginning of a</b></p> <p>16 <b>paragraph when you're referring to</b></p> <p>17 <b>something --</b></p> <p>18 (Brief interruption due to</p> <p>19 overlapping speakers.)</p> <p>20 THE WITNESS: I understand. My</p> <p>21 shins have healed up real</p> <p>22 nicely since doing non-live</p> <p>23 depositions because of court</p>
<p>Page 14</p> <p>1 acronyms that you use in your report.</p> <p>2 <b>A. By the way, I'm in a hotel room. So if all</b></p> <p>3 <b>of a sudden you hear my dogs barking, just</b></p> <p>4 <b>give me a moment because they don't like</b></p> <p>5 <b>people walking down the hallway. And I'm</b></p> <p>6 <b>only here for a couple of days, so it's</b></p> <p>7 <b>twice I'm deposing here this week alone.</b></p> <p>8 Q. I understand. And we'll do so.</p> <p>9 All right. So looking on your report,</p> <p>10 the bottom of page 3 and continuing onto</p> <p>11 page 4, I'd like to ask you about that</p> <p>12 sentence that starts with apply the</p> <p>13 knowledge. Do you see which sentence I'm</p> <p>14 referencing?</p> <p>15 <b>A. You're saying on page 3?</b></p> <p>16 Q. At the very bottom of page 3 of your</p> <p>17 report.</p> <p>18 <b>A. The assignment?</b></p> <p>19 Q. Oh, I'm sorry. It actually shows it -- so</p> <p>20 it's numbered page 3, but it's actually, I</p> <p>21 believe, the fourth page of your report.</p> <p>22 Do you see that on the screen?</p> <p>23 And I'm not sure why --</p>	<p>Page 16</p> <p>1 reporters kicking me under the</p> <p>2 table.</p> <p>3 Q. (By Ms. Baugh:) Okay, Mr. Turner. So the</p> <p>4 language starting at the bottom of page 3</p> <p>5 that goes over onto page 4 where you say</p> <p>6 that you are applying the knowledge,</p> <p>7 experience, and education along with</p> <p>8 standards of care and the FMCSR, what I'd</p> <p>9 like you to identify, please, sir, is what</p> <p>10 standards of care are you identifying.</p> <p>11 <b>A. Well, in this report here -- you know, and</b></p> <p>12 <b>I made this note earlier when I was</b></p> <p>13 <b>reviewing the report again -- is that I</b></p> <p>14 <b>would actually like to more refer to it as</b></p> <p>15 <b>best practices as opposed to standards --</b></p> <p>16 <b>so wherever we see standards of care, I</b></p> <p>17 <b>would more reflect -- be reflective upon</b></p> <p>18 <b>best practices. That's where a lot of --</b></p> <p>19 <b>standards of care and/or best practices.</b></p> <p>20 <b>And this particular part here doesn't say</b></p> <p>21 <b>that, but you'll see throughout the report</b></p> <p>22 <b>it does say standards of care and best</b></p> <p>23 <b>practices.</b></p>

<p>Page 17</p> <p>1 Q. Okay. And what is the source, then, of the</p> <p>2 best practices that you were applying for</p> <p>3 this opinion?</p> <p>4 <b>A. Well, best practices would be from a</b></p> <p>5 <b>combination of my years of driving</b></p> <p>6 <b>commercial motor vehicles, responding to</b></p> <p>7 <b>commercial -- over a thousand commercial</b></p> <p>8 <b>motor vehicle crashes, tests hundreds of</b></p> <p>9 <b>times in this universe of what we do here,</b></p> <p>10 <b>in addition to enforcement, roadside</b></p> <p>11 <b>enforcement inspections. And so, you know,</b></p> <p>12 <b>that's pretty much the larger part of what</b></p> <p>13 <b>would be best practices.</b></p> <p>14 Q. Okay. So when you're saying best practices</p> <p>15 or the times in the report where it says</p> <p>16 standards of care, understanding you want</p> <p>17 that to be interpreted as best practices,</p> <p>18 you're referencing your own experience. Is</p> <p>19 that fair?</p> <p>20 <b>A. Well, my own experiences as well as the</b></p> <p>21 <b>testimony within the report -- within this</b></p> <p>22 <b>case here as well. For example, you have</b></p> <p>23 <b>Mr. Ross talks about that he offered to</b></p>	<p>Page 19</p> <p>1 So looking at that clause, you are</p> <p>2 applying -- I'm sorry?</p> <p>3 <b>A. No. Once again, under standards of care it</b></p> <p>4 <b>would be -- so let's use the term and/or</b></p> <p>5 <b>best practices throughout the entirety of</b></p> <p>6 <b>the report.</b></p> <p>7 Q. Okay. I will try to make sure to read that</p> <p>8 in where it is not, but, yes, understood.</p> <p>9 <b>A. I'll remember.</b></p> <p>10 Q. So for your opinions, your opinions are</p> <p>11 also setting out what you believe to be the</p> <p>12 application of the Federal Motor Carrier</p> <p>13 Safety Regulation to these facts. Is that</p> <p>14 accurate?</p> <p>15 <b>A. Well, yes, I mean, in terms of duties.</b></p> <p>16 <b>And by the way, when we get further in</b></p> <p>17 <b>through this, when I refer to the term</b></p> <p>18 <b>"duty" anywhere in the report -- that's</b></p> <p>19 <b>another caveat here -- is that I'm</b></p> <p>20 <b>referring to it -- I'm not referring to it</b></p> <p>21 <b>from a legal standpoint, from a legal --</b></p> <p>22 <b>what a jury would be charged with or what a</b></p> <p>23 <b>judge is going to determine or an attorney.</b></p>
<p>Page 18</p> <p>1 <b>give up straps to the loader. The loader</b></p> <p>2 <b>refused them. So to me in my mind, the</b></p> <p>3 <b>best practice would have been to accept</b></p> <p>4 <b>those straps and install them or simply,</b></p> <p>5 <b>you know, use your own straps, which he</b></p> <p>6 <b>didn't do.</b></p> <p>7 <b>So that's where I'm looking at. This</b></p> <p>8 <b>is a best practice. Because when you</b></p> <p>9 <b>don't -- when you can't pair it up to a</b></p> <p>10 <b>regulation, then you have to look at</b></p> <p>11 <b>something, and it's something -- would be</b></p> <p>12 <b>something similar to a best practice.</b></p> <p>13 Q. Okay. But in the example you just gave,</p> <p>14 the best practice is your opinion of what</p> <p>15 should have happened?</p> <p>16 <b>A. Correct.</b></p> <p>17 Q. Okay. And you continue that sentence. So</p> <p>18 after the semicolon, you are drawing from</p> <p>19 the universe of information collected and</p> <p>20 known by the undersigned to form the</p> <p>21 opinions regarding the applicability of the</p> <p>22 FMCSR and the standard of care as it</p> <p>23 pertains to shippers.</p>	<p>Page 20</p> <p>1 <b>It's not from Black's Law Dictionary. What</b></p> <p>2 <b>it simply is from, it's from Oxford --</b></p> <p>3 <b>Oxford Dictionary where, number 2, it says</b></p> <p>4 <b>a task or notation -- or excuse me -- a</b></p> <p>5 <b>task or an action that someone is required</b></p> <p>6 <b>to perform.</b></p> <p>7 <b>So I want to make sure that, you know,</b></p> <p>8 <b>we're clear on that, that I'm not -- I'm</b></p> <p>9 <b>not giving opinions -- legal opinions.</b></p> <p>10 Q. But if someone is required to perform that</p> <p>11 action, who is requiring the performance?</p> <p>12 <b>A. Well, I'm not quite certain I follow what</b></p> <p>13 <b>you're saying in relation to what I just</b></p> <p>14 <b>stated.</b></p> <p>15 MS. DYE: Object to form.</p> <p>16 Q. Well, you stated that when you use the word</p> <p>17 "duty" you are not meaning it in a legal</p> <p>18 sense but that you mean it to be a required</p> <p>19 action or a requirement to perform. So who</p> <p>20 is requiring that action or performance?</p> <p>21 <b>A. Well, according to -- according to Knauf --</b></p> <p>22 <b>Knauf personnel, you have one individual</b></p> <p>23 <b>that goes out and loads it, and he's got</b></p>

<p style="text-align: right;">Page 21</p> <p>1 the authority -- appears to be the sole 2 authority on whether it was safely loaded 3 or not. And then when he's offered a set 4 of straps, he rejects the set of straps and 5 says, I have my own. 6 So, yeah, I mean, I look at that and 7 say that right there to me in my mind would 8 be required to perform. As I said it 9 stated in the definition, a task or action 10 that someone is required to perform. 11 He was required to perform that because 12 he had been notified on multiple -- or they 13 had -- Knauf had been notified on multiple 14 occasions from CABP that the articles of 15 cargo -- and that's what I refer to them 16 as, insulation, whatever you'd like to 17 refer it -- but the articles of cargo on 18 the semitrailer on multiple occasions -- I 19 think there was something like 24 20 complaints -- that there was a cascading of 21 these things coming out. 22 So does the -- in my definition of duty 23 as being a standard -- you know, Oxford</p>	<p style="text-align: right;">Page 23</p> <p>1 So that's what I'm saying, is that he 2 would be required to perform this -- I 3 mean, it's -- you know, I guess it may kind 4 of be a parsing of words, but he is 5 required to perform to make sure that 6 those -- if he's going to seal that trailer 7 and the driver then has the right of 8 reasonable expectation because he was told 9 I don't want your straps, we have our 10 own -- he's got the right of reasonable 11 expectation to look at that and say 12 apparently that's well secured, the 13 articles of cargo have been adequately 14 secured. 15 Q. So are you saying Mr. Ross is requiring the 16 action in this case? 17 A. Who? 18 Q. Mr. Ross, the plaintiff. 19 A. No. No, I didn't say that. 20 Q. Okay. So you're telling me that when you 21 use the word "duty," you're not saying it's 22 a legal requirement. 23 A. Correct.</p>
<p style="text-align: right;">Page 22</p> <p>1 Dictionary duty, would they have the duty 2 as a task or action that one is required to 3 perform, yeah. In my opinion, yes, they 4 are required to do that because the driver 5 didn't have opportunity to watch a live 6 load. He was told to go sit in your truck 7 and just wait there. Here's my strap. 8 They deny the straps, said we have our own. 9 So he had a right of reasonable assumption 10 that the articles of cargo were adequately 11 secured in accordance with 392.9. 12 Q. So who's requiring the action? You? 13 A. Am I requiring it? 14 No. No, ma'am. That would have 15 been -- 16 Q. All right. Then who in that example that 17 you gave -- who is requiring the action? 18 A. The action is being required because the 19 straps were offered -- as I stated, they 20 were offered to the Knauf individual that 21 was loading, the loader, as stated by 22 Weldon. They were offered to him, and he 23 rejected them.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. But I'm trying to understand who, then, is 2 placing the requirement, because for a 3 requirement to exist it has to be created 4 by someone or, you know, an entity. 5 Who is creating this requirement that 6 you are setting forth as the duty? 7 MS. DYE: Object to the form. 8 A. Well, it's a requirement to wear a seatbelt 9 in a vehicle while you're driving. If you 10 choose not to, that's your own negligent -- 11 so it's -- it's not a -- it's not something 12 you can look at and say that there is a -- 13 because Weldon says that the only time that 14 they apply straps is when a customer asks 15 for that, asks to have straps applied, but 16 yet he knew -- clearly knew that multiple 17 times there was cascading events. 18 So in my line of thinking and in my 19 expertise, I look at that and say that 20 would place the burden of the -- the duty, 21 again, being -- Oxford Dictionary -- a task 22 or action that someone is required to 23 perform -- that's where I come in with the</p>



<p>Page 25</p> <p>1 requirement aspect.</p> <p>2 If you're asking me to point to you a</p> <p>3 specific Alabama law or a Georgia law or a</p> <p>4 Scott Turner law or any other thing like</p> <p>5 that, I can't -- I can't do it. This is</p> <p>6 not an ipse dixit issue here. This is --</p> <p>7 this is just something -- this is something</p> <p>8 that is logically -- and this is what the</p> <p>9 suit is all about. Because you have a</p> <p>10 shipper that apparently doesn't apply the</p> <p>11 safety mechanisms that they should have</p> <p>12 applied because they just didn't feel it</p> <p>13 was necessary and they just kept on saying</p> <p>14 "no," even though they were offered straps.</p> <p>15 And they were told, no, we don't want your</p> <p>16 straps, we have our own, go sit in your</p> <p>17 truck and wait up there.</p> <p>18 So to me it's a reasonable expectation</p> <p>19 that the professional CMV driver, Mr. Ross,</p> <p>20 who comes from a motor carrier, Heartland,</p> <p>21 that has an outstanding safety record. If</p> <p>22 you look at their MSS -- SMS -- I'm</p> <p>23 sorry -- SMS data, they have an outstanding</p>	<p>Page 27</p> <p>1 straps, we have our own.</p> <p>2 Q. What testimony are you relying on to say</p> <p>3 that Knauf said I don't want your straps,</p> <p>4 we have our own?</p> <p>5 A. Sure. Hold on.</p> <p>6 Okay. It is deposition testimony,</p> <p>7 page -- on Ross, 224, slash, 23, and it's</p> <p>8 on the deposition of 2-28-24. And if you</p> <p>9 read, it says -- let's see here.</p> <p>10 And it's on my page 5 if you want to</p> <p>11 follow along. My page 5, the middle</p> <p>12 paragraph there, the third paragraph down,</p> <p>13 and I'll read it into the record. And this</p> <p>14 is our wording first, and then it goes into</p> <p>15 the deposition.</p> <p>16 Professional CMV driver Ross gave sworn</p> <p>17 testimony -- excuse me -- deposition</p> <p>18 testimony as to the occurrences of his</p> <p>19 arrival at Knauf and the direction he was</p> <p>20 provided by Knauf employee on site.</p> <p>21 Question: Who did the black</p> <p>22 gentleman -- I went up. I went up. There</p> <p>23 was another driver ahead of me, so he</p>
<p>Page 26</p> <p>1 safety record with an incredibly low driver</p> <p>2 out-of-service rate.</p> <p>3 So if you look at all these things, you</p> <p>4 know, in an entirety, this is how I come up</p> <p>5 with this opinion. Now, is there something</p> <p>6 that sits there and says that specifically</p> <p>7 that a shipper has a required --</p> <p>8 quote/unquote, required to perform, no.</p> <p>9 But logically I look at it and say that the</p> <p>10 shipper should have, quote, performance --</p> <p>11 and they represent it to the driver</p> <p>12 logically that it was performed by stating</p> <p>13 we don't need your straps, we have our own.</p> <p>14 In addition, it would be completely</p> <p>15 nonsensical for Mr. Ross to pull the CMV</p> <p>16 forward, doors get -- it gets closed on the</p> <p>17 semitrailer, and then they put a seal on.</p> <p>18 He pulls the truck out 5 feet and says,</p> <p>19 give me your bolt cutters, I'm going to</p> <p>20 open this up and I'm going to inspect it.</p> <p>21 That's just -- that's just nonsensical.</p> <p>22 Because they just got done putting the seal</p> <p>23 on there and they stated we don't want your</p>	<p>Page 28</p> <p>1 took -- so he took care of him. And then I</p> <p>2 told him who I was and that I was there --</p> <p>3 what I was there for. And I had two straps</p> <p>4 with me because the dispatch required --</p> <p>5 the dispatch required -- required me to</p> <p>6 supply two load straps.</p> <p>7 And here's the important part.</p> <p>8 And I had the two load straps with me</p> <p>9 and -- and I presented them to him. And he</p> <p>10 told me that he -- they already had some,</p> <p>11 that they didn't need them and that the</p> <p>12 trailer was -- and that the trailer wasn't</p> <p>13 quite ready yet --</p> <p>14 THE WITNESS: I have a tendency to</p> <p>15 read fast and do that to the</p> <p>16 court reporter.</p> <p>17 A. -- to go back and wait in my -- wait in my</p> <p>18 truck.</p> <p>19 So he's told we don't need your straps,</p> <p>20 we don't want your straps, we have our own,</p> <p>21 go back in your truck and wait, as I had</p> <p>22 stated earlier.</p> <p>23 Q. Okay. Well, wait. That last part is your</p>

<p style="text-align: right;">Page 29</p> <p>1 paraphrasing. But in terms of Mr. Ross'</p> <p>2 testimony, that's what you're relying on?</p> <p>3 <b>A. No, I'm not paraphrasing. That's actual</b></p> <p>4 <b>testimony where it says to go back out and</b></p> <p>5 <b>wait in my truck. So he waited in his</b></p> <p>6 <b>truck for about an hour and a half.</b></p> <p>7 Q. Yes. But then you went into a paraphrasing</p> <p>8 and summary.</p> <p>9 So the quoted testimony from Mr. Ross</p> <p>10 is what you're relying on to represent that</p> <p>11 Knauf did not want to use Mr. Ross' straps.</p> <p>12 That's the bases?</p> <p>13 <b>A. Sure. I have no reason to dispute or</b></p> <p>14 <b>challenge the veracity of his testimony. I</b></p> <p>15 <b>mean, that's not my job. That's to the</b></p> <p>16 <b>trier of the facts.</b></p> <p>17 Q. I am simply trying to confirm what the</p> <p>18 bases is for what you're relying on.</p> <p>19 <b>A. Oh, sure. I understand.</b></p> <p>20 Q. Okay. So going back to what we were</p> <p>21 talking about with the duty, though, you</p> <p>22 are saying you are not citing -- when</p> <p>23 you -- when you're identifying a duty, you</p>	<p style="text-align: right;">Page 31</p> <p>1 Q. So you're determining --</p> <p>2 <b>A. And/or carelessness.</b></p> <p>3 Q. So you are opining as to whether Knauf was</p> <p>4 negligent?</p> <p>5 <b>A. Not in -- again, not in a legal definition.</b></p> <p>6 <b>And we can go back to Oxford. I use my</b></p> <p>7 <b>term -- definitions out of Oxford</b></p> <p>8 <b>Dictionary.</b></p> <p>9 <b>So if we want to look at negligence,</b></p> <p>10 <b>I'm not saying from the legal standpoint</b></p> <p>11 <b>the different levels of negligence from</b></p> <p>12 <b>Black's Law Dictionary and/or State of</b></p> <p>13 <b>Alabama or even from the United States</b></p> <p>14 <b>District Courts. What I'm saying is that</b></p> <p>15 <b>negligence -- just the simple negligence --</b></p> <p>16 <b>just means to me is that someone did not do</b></p> <p>17 <b>something that they were supposed to do.</b></p> <p>18 Q. Okay. And what is creating the something</p> <p>19 they're supposed to do?</p> <p>20 <b>A. The something they were supposed to do was</b></p> <p>21 <b>to make sure that they were applying the</b></p> <p>22 <b>necessary straps to secure the articles of</b></p> <p>23 <b>cargo from relative motion/shifting at any</b></p>
<p style="text-align: right;">Page 30</p> <p>1 are not citing to a legal duty?</p> <p>2 MS. DYE: Object to the form.</p> <p>3 <b>A. That's correct. If you open up Black's Law</b></p> <p>4 <b>Dictionary, you put Oxford next to --</b></p> <p>5 <b>beside it, I'm referring to the second</b></p> <p>6 <b>paragraph -- or the second definition under</b></p> <p>7 <b>Oxford.</b></p> <p>8 Q. Okay.</p> <p>9 <b>A. And, again, would you want -- would you</b></p> <p>10 <b>like me to read that back into the record</b></p> <p>11 <b>again?</b></p> <p>12 Q. No.</p> <p>13 <b>A. It's basically, number 2, a task or action</b></p> <p>14 <b>that someone is required to perform.</b></p> <p>15 <b>And because Knauf did not require that</b></p> <p>16 <b>performance does not mean that it is not an</b></p> <p>17 <b>act of carelessness or negligence.</b></p> <p>18 Q. You said it does or does not?</p> <p>19 <b>A. No. What I said is that because Knauf does</b></p> <p>20 <b>not require the securement, it does not</b></p> <p>21 <b>mean that it -- what they are doing is not</b></p> <p>22 <b>an act of negligence, what they are failing</b></p> <p>23 <b>to do is not an act of negligence.</b></p>	<p style="text-align: right;">Page 32</p> <p>1 <b>point in time throughout transport from</b></p> <p>2 <b>point A to point B to Cordele, Georgia, and</b></p> <p>3 <b>they failed to do so. Because they didn't</b></p> <p>4 <b>have a policy in place doesn't release them</b></p> <p>5 <b>of that duty.</b></p> <p>6 Q. Okay. So you have identified an obligation</p> <p>7 for Knauf to secure the load. What creates</p> <p>8 that obligation?</p> <p>9 <b>A. Again --</b></p> <p>10 MS. DYE: Object to the form.</p> <p>11 Asked and answered.</p> <p>12 <b>A. -- it's a matter of making sure that the</b></p> <p>13 <b>people that are coming to their facility --</b></p> <p>14 <b>coming to their -- or to their facility or</b></p> <p>15 <b>they're transporting a load that they</b></p> <p>16 <b>loaded, it's a matter of their requirement</b></p> <p>17 <b>to make sure that they have secured those</b></p> <p>18 <b>articles of cargo that they're representing</b></p> <p>19 <b>to the driver -- that's the important</b></p> <p>20 <b>part -- that they're representing to the</b></p> <p>21 <b>driver that they have secured the load.</b></p> <p>22 <b>And by way of Ross, again, being told</b></p> <p>23 <b>we have our own straps is a reasonable</b></p>

<p style="text-align: right;">Page 33</p> <p>1 expectation for Mr. Ross to say clearly</p> <p>2 they are going to be securing the load.</p> <p>3 And it's not a live load. It's a load</p> <p>4 where he has got to sit in his truck</p> <p>5 tractor, not allowed to make observation,</p> <p>6 and it's as simple as that.</p> <p>7 Q. Okay. So it is Knauf's obligation to</p> <p>8 secure the load because Mr. Ross expected</p> <p>9 it to be done that way?</p> <p>10 MS. DYE: Object to the form.</p> <p>11 A. No. Because they referenced that they were</p> <p>12 going to secure the load by stating that</p> <p>13 they have their own straps. We don't need</p> <p>14 your straps. We have our own.</p> <p>15 Q. And so you interpret that to mean Knauf was</p> <p>16 telling Mr. Ross this load will be secured</p> <p>17 with straps?</p> <p>18 A. It's a reasonable expectation, yes.</p> <p>19 Q. And that is your reasonable expectation?</p> <p>20 A. Clearly was Mr. Ross' reasonable</p> <p>21 expectation as well.</p> <p>22 Q. Why do you say that?</p> <p>23 A. Because he took the CMV to the -- from</p>	<p style="text-align: right;">Page 35</p> <p>1 videographer.)</p> <p>2 A. Okay. Again, page -- on Ross deposition</p> <p>3 transcript page 224, line 23, it starts</p> <p>4 out. And it starts out with I don't know</p> <p>5 the gentleman's name. All right. And then</p> <p>6 I'm going to skip -- I'm going to skip down</p> <p>7 to the more substantive part which is</p> <p>8 underscored in the report on page 5.</p> <p>9 It says: And I had the two straps with</p> <p>10 me and I presented them to him and he told</p> <p>11 me that they already had some, that he</p> <p>12 didn't need them.</p> <p>13 So I draw a conclusion from that saying</p> <p>14 that they were intending or forgot to put</p> <p>15 straps on. I don't know which of the two</p> <p>16 it is, but this -- and I have no reason to</p> <p>17 doubt the veracity of Mr. Ross' testimony.</p> <p>18 Q. Okay. So understanding that's your</p> <p>19 inference, my question was, what are you</p> <p>20 relying for a factual basis that Mr. Ross</p> <p>21 understood that there would be straps on</p> <p>22 the load?</p> <p>23 A. Again, I can only base it on what I've read</p>
<p style="text-align: right;">Page 34</p> <p>1 point A to point B with articles of cargo</p> <p>2 that he was under the understanding was</p> <p>3 secured. He took it from point A to</p> <p>4 point B to Cordele, Georgia, where he</p> <p>5 opened up the back of the semitrailer and</p> <p>6 the articles of cargo cascaded onto him, of</p> <p>7 which, again, Knauf had been warned about</p> <p>8 this multiple times.</p> <p>9 Q. What are you relying on for Mr. Ross'</p> <p>10 understanding?</p> <p>11 A. I'm sorry?</p> <p>12 Q. What are you relying on to identify</p> <p>13 Mr. Ross' understanding?</p> <p>14 A. His testimony.</p> <p>15 Q. What part of his testimony says he</p> <p>16 understood the load was secured with</p> <p>17 straps?</p> <p>18 A. That's not exactly what I said. What I</p> <p>19 said was -- bear with me a second. I'll</p> <p>20 have to find it again.</p> <p>21 I just read it into the record a moment</p> <p>22 ago. I'll read it back in again.</p> <p>23 (Brief interruption by the</p>	<p style="text-align: right;">Page 36</p> <p>1 in testimony.</p> <p>2 Q. Okay.</p> <p>3 A. Now, is it an absolute black-and-white</p> <p>4 issue?</p> <p>5 Again -- once again, I do not have the</p> <p>6 right as an expert to exclude the testimony</p> <p>7 of Mr. Ross and just say I don't believe</p> <p>8 him. You know, it's just not -- there's no</p> <p>9 issue of falsus in uno, falsus in omnibus</p> <p>10 here. I mean, I just don't -- I don't get</p> <p>11 into that.</p> <p>12 Q. That wasn't the question. My question is</p> <p>13 just for you to identify what it is that</p> <p>14 you're relying on to identify what Mr. Ross</p> <p>15 understood, and you stated that Mr. Ross</p> <p>16 understood there to be straps. So if</p> <p>17 you're only basing it on the testimony that</p> <p>18 you've pointed back to of Mr. Ross, that's</p> <p>19 fine. Is that it?</p> <p>20 A. And I -- I said -- I apologize if I didn't</p> <p>21 say that multiple times. I thought I did.</p> <p>22 Q. Okay. Let's go to page 10 of your report.</p> <p>23 A. Okay.</p>

<p>Page 37</p> <p>1 Q. Okay. You have -- scrolling down after a 2 section break, I suppose, the paragraph 3 that begins with "Due" -- do you see this 4 paragraph? 5 <b>A. Yes.</b> 6 Q. All right. You have: Due to specific 7 loading circumstances regarding the subject 8 CMV semitrailer -- in parentheses, 9 semitrailer sealed, load straps refused, 10 and Ross directed to wait in truck 11 trailer -- it is highly probable the 12 shipper, Knauf, accepts the burden and/or 13 responsibility of adequate securement of 14 the articles of cargo within the subject 15 CMV semitrailer. 16 Do you see that statement? 17 <b>A. I do.</b> 18 Q. Okay. What do you mean by the phrase 19 "highly probable" in that sentence? 20 <b>A. Well, highly probable means that it's not</b> 21 <b>absolute. Highly probable means it's</b> 22 <b>almost absolute. Then you have -- we use</b> 23 <b>different terminology dependent upon a</b></p>	<p>Page 39</p> <p>1 don't understand what you mean by applying 2 it to the cases. 3 <b>A. So in other words, cut and paste. What I</b> 4 <b>just read into the record -- and I'll go</b> 5 <b>back and read it again if you'd like.</b> 6 Q. No, no, no. I'm just trying to understand 7 when you say that you're applying testimony 8 to the cases. I don't understand what you 9 mean by applying it to the cases. I just 10 want to understand what you said as to that 11 part. 12 <b>A. Sure. I take the entirety of all of this</b> 13 <b>discovery that's listed on the back of the</b> 14 <b>report -- the entirety of -- we look at the</b> 15 <b>entirety of all discovery in a report.</b> 16 <b>Then we look at the regulations, standards</b> 17 <b>of care, et cetera, whatever may apply to a</b> 18 <b>particular crash or incident involving</b> 19 <b>commercial motor vehicles. We take all</b> 20 <b>that testimony. We take everybody -- we</b> 21 <b>take everything into consideration. We put</b> 22 <b>it in a big pot, mix it up, and then we</b> 23 <b>pour a report out of it at the end. And</b></p>
<p>Page 38</p> <p>1 level -- you know, if we said it's 2 probable, a much higher degree of that is 3 highly probable -- highly probable. Excuse 4 me. 5 So where it says it is highly probable 6 the shipper, Knauf, accepts the burden and 7 the responsibility of adequate securement 8 of the articles of cargo within the subject 9 semi -- CMV semitrailer -- so when we say 10 highly probable, it's highly probable 11 because the loader came right out and said 12 to Mr. Ross don't worry about your straps, 13 we have our own, go sit in your truck and 14 wait there. 15 Q. Okay. Are you applying a standard to reach 16 your highly probable conclusion? 17 <b>A. I fall back on my response before. It's</b> 18 <b>based on testimony. And I have -- I have</b> 19 <b>the reasonable right to read testimony and</b> 20 <b>apply it to the cases as I see fit, and</b> 21 <b>that's what I'm doing.</b> 22 Q. Wait. When you say read the testimony and 23 apply it to the cases as you see fit, I</p>	<p>Page 40</p> <p>1 that's what we did here. 2 So I have taken testimony of 3 Mr. Ross -- and, again, of whom I have no 4 authority to presume he was disingenuous or 5 anything. I have to take that report, cut 6 and paste things that I see and feel are 7 applicable to the -- and seminal issues to 8 the crash or the incident, and then apply 9 it. That's what I'm talking about. 10 Q. Okay. And so in this case for this 11 statement that we're talking about, the 12 "due to the specific loading 13 circumstances," et cetera, I asked you 14 whether or not you were applying a 15 standard, and you said, no, just testimony. 16 So this opinion is based off of your review 17 of the testimony? 18 <b>A. That's correct. That's based on my review</b> 19 <b>of the testimony. That's based on the fact</b> 20 <b>that the motor carrier does not permit</b> 21 <b>their drivers to cut the -- just</b> 22 <b>arbitrarily cut a seal, and he had no</b> 23 <b>authority to do so. I mean, this is --</b></p>

<p>Page 41</p> <p>1 with that term of things -- you know, 2 articles of cargo falling off the back of a 3 trailer. Because you pull into a truck 4 stop and you cut that seal just to go back 5 and take a look at it without the 6 authority -- and Weldon -- Weldon himself 7 even -- even suggested to the fact that -- 8 you know, that you can't just arbitrarily 9 cut a seal.</p> <p>10 Q. Which testimony of Mr. Weldon are you 11 relying on to say that Mr. Ross was not 12 allowed to cut the seal?</p> <p>13 A. I didn't say not allowed. I didn't say 14 that. Hold on one second here.</p> <p>15 Okay. Here it is. This would be CW, 16 so it's Mr. Weldon, page 107 -- transcript 17 page 107, line 1. It says, question: 18 Okay. So he comes out and he's got a 19 sealed trailer and he hooks up to that 20 trailer and drives away. Is that generally 21 the process?</p> <p>22 Answer: Once he picks up the 23 paperwork, yes.</p>	<p>Page 43</p> <p>1 than you who would make sure that the 2 loaders were loading the product the way 3 that Knauf wanted the product to be loaded? 4 No. 5 So they took a loader and just said, 6 here, have at it, make sure it's stacked in 7 there properly. And then he goes over to 8 Mr. Knauf -- and the jury -- you know, 9 I believe that the jury would take this 10 with some demonstrable evidence and just be 11 able to look at this and say, wait a 12 second, they just sent the driver away and 13 said go sit in your truck, we don't want 14 your straps, we have our own. So what does 15 that imply? That they are going to secure 16 articles of cargo in the back of this 17 semitrailer.</p> <p>18 Q. Okay. You stated that motor carriers don't 19 allow their drivers to just cut the seal -- 20 I believe you said willy-nilly. What are 21 you relying on for that statement?</p> <p>22 A. Well, Heartland -- Heartland doesn't allow 23 that.</p>
<p>Page 42</p> <p>1 Question: Okay. So prior -- but 2 because it's sealed, he has no opportunity 3 to inspect what's inside this trailer 4 before he drives away; right?</p> <p>5 Correct.</p> <p>6 Question: All -- all right. Now, 7 obviously if he can't look inside the 8 trailer, he can't -- he can't know whether 9 or not there's load straps or other safety 10 equipment used, can he?</p> <p>11 Correct.</p> <p>12 And then he says -- a little further 13 down he says that he won't know -- he won't 14 know it until -- unless he opens the door.</p> <p>15 And then it goes on to say on the 16 second question -- this is on page 12, by 17 the way, of my report.</p> <p>18 Question: And -- let's see. So it's 19 solely the responsibility of the loader -- 20 warehouse associate to make sure that it's 21 stacked correctly?</p> <p>22 Answer: Yes.</p> <p>23 Question: And is there anybody other</p>	<p>Page 44</p> <p>1 And, by the way, I never used the term 2 "willy-nilly," but that's quite all right. 3 Heartland -- Heartland does not permit 4 their drivers to just go back and cut 5 straps -- excuse me -- cut seals. They 6 just don't allow it.</p> <p>7 No motor carrier does that, by the way, 8 that I know of, and I've been doing this 9 kind of work for a long, long time. 10 Because if you cut those seals, you've now 11 subjected that -- those articles of cargo 12 to theft. And that's the whole reason that 13 the seal is placed there, for no other 14 reason than theft, as a theft deterrent.</p> <p>15 Q. What are you relying on to say that 16 Heartland does not allow its drivers to cut 17 the seals?</p> <p>18 A. I don't recall exactly where I -- where 19 that came from, but she -- there was 20 some -- there was something -- something to 21 that effect that Heartland does not permit 22 the cutting of seals. I -- and it would go 23 along with the standards of industry</p>

<p>Page 45</p> <p>1 practice. They don't just allow drivers to</p> <p>2 cut seals.</p> <p>3 Normally what happens if a driver has</p> <p>4 any degree of suspicion of the articles of</p> <p>5 cargo being loaded improperly or what have</p> <p>6 you, unsecured, then what would happen is</p> <p>7 that they can call their dispatch, dispatch</p> <p>8 calls the consignor, they call the broker,</p> <p>9 they call the motor -- the shipper and say</p> <p>10 our driver wants to cut that strap -- the</p> <p>11 seal. And at that point they can act</p> <p>12 accordingly. But that's normally what</p> <p>13 would happen. It wouldn't be just a driver</p> <p>14 arbitrarily going up to a shipper and</p> <p>15 saying I want to cut the seal.</p> <p>16 He just understood -- Ross understood</p> <p>17 that these articles of cargo, this</p> <p>18 insulation, was secured because, you know,</p> <p>19 he had a right of reasonable expectation</p> <p>20 that it was properly and adequately secured</p> <p>21 based on the fact that they were -- they</p> <p>22 said that -- or the loader said that I</p> <p>23 don't want your straps, don't need your</p>	<p>Page 47</p> <p>1 What regulatory --</p> <p>2 A. Let me read the entirety of that paragraph</p> <p>3 because you kind of jumped in the middle</p> <p>4 someplace before I had a chance to find it,</p> <p>5 and I wasn't really, you know, paying</p> <p>6 specific attention. And I like to read</p> <p>7 things myself because it makes a little</p> <p>8 more sense to me. So let me just read that</p> <p>9 paragraph real quick, if you may -- if I</p> <p>10 may.</p> <p>11 Okay.</p> <p>12 Q. All right. In the sentence that we've just</p> <p>13 referenced, what regulatory guidance are</p> <p>14 you referencing?</p> <p>15 A. Well, as I stated earlier, I'm not relying</p> <p>16 upon -- I'm relying on testimony.</p> <p>17 Q. Okay. But that sentence specifically</p> <p>18 says --</p> <p>19 A. It says right there -- it says right there</p> <p>20 load straps refused.</p> <p>21 Q. Okay.</p> <p>22 A. It says --</p> <p>23 Q. Sir --</p>
<p>Page 46</p> <p>1 straps, I have my -- we have our own, thank</p> <p>2 you very much, go back to your cab.</p> <p>3 Q. Okay. When you testified just now as to</p> <p>4 what Mr. Ross understood in his reasonable</p> <p>5 right of understanding, that's based on</p> <p>6 your opinions to the testimony that you've</p> <p>7 read?</p> <p>8 A. Yes.</p> <p>9 Q. Thank you.</p> <p>10 Okay. Looking back at the page that we</p> <p>11 have up here, page 10 of your report. We</p> <p>12 read the first sentence of that paragraph.</p> <p>13 Moving on to the second one, the one that</p> <p>14 starts "more specifically."</p> <p>15 So it says: More specifically,</p> <p>16 regulatory guidance as well as industry</p> <p>17 standards of care and/or best practices</p> <p>18 provide that when a shipper seals the CMV</p> <p>19 semitrailer, their known responsibility as</p> <p>20 to adequate cargo securement are</p> <p>21 heightened.</p> <p>22 All right. I want to break that down</p> <p>23 some.</p>	<p>Page 48</p> <p>1 A. See, that's why I always like to read</p> <p>2 everything in context and just not jump in</p> <p>3 the middle of something because it could be</p> <p>4 taken out of context. Because what it</p> <p>5 says: Due to specific loading</p> <p>6 circumstances requiring the subject CMV</p> <p>7 semitrailer -- and then it says in</p> <p>8 parentheses, semitrailer sealed, load</p> <p>9 straps refused, and Ross directed to wait</p> <p>10 in the truck tractor.</p> <p>11 So you can't -- you can't just jump in</p> <p>12 the middle of that paragraph and -- you</p> <p>13 know, I'm trained to make sure that -- I</p> <p>14 trained myself to make sure that I take</p> <p>15 everything in full context and not just</p> <p>16 jumping in the middle of the paragraph</p> <p>17 because it can have very different meaning</p> <p>18 if not put in full context.</p> <p>19 Q. Sir, that is not responsive to my question.</p> <p>20 My question was, the second sentence of</p> <p>21 the paragraph that you just referenced</p> <p>22 starts, more specifically, regulatory</p> <p>23 guidance, and it continues.</p>

<p>Page 49</p> <p>1 My question is simply for you to</p> <p>2 identify what regulatory guidance you are</p> <p>3 using in that sentence where you say, more</p> <p>4 specifically, regulatory guidance.</p> <p>5 <b>A. Okay. What you're missing is a very</b></p> <p>6 <b>important word once again. Okay. More</b></p> <p>7 <b>specifically, regulatory guidance as well</b></p> <p>8 <b>as industry standards of care and/or best</b></p> <p>9 <b>practices.</b></p> <p>10 <b>We're relying upon best practices. We</b></p> <p>11 <b>know within industry standards that</b></p> <p>12 <b>articles of cargo -- excuse me -- within</b></p> <p>13 <b>industry standards as well as regulatory</b></p> <p>14 <b>guidance that articles of cargo must be</b></p> <p>15 <b>adequately secured. We know that. And</b></p> <p>16 <b>that's under 392.7. It states that very</b></p> <p>17 <b>specifically.</b></p> <p>18 <b>And then you have exception -- you</b></p> <p>19 <b>have -- in the interpretation section you</b></p> <p>20 <b>have some (audio distortion) --</b></p> <p>21 (Brief interruption by the court</p> <p>22 reporter.)</p> <p>23 <b>A. Okay. All right. So let me start over.</b></p>	<p>Page 51</p> <p>1 <b>with that -- is that it's represented by</b></p> <p>2 <b>Knauf's employee, the loader, that we have</b></p> <p>3 <b>our own straps. That to me would mean --</b></p> <p>4 <b>is that I'm going to be driving a semi --</b></p> <p>5 <b>this is his first -- this is Ross' first</b></p> <p>6 <b>time there; all right?</b></p> <p>7 <b>He's going to be operating and pulling</b></p> <p>8 <b>a load that has been properly and</b></p> <p>9 <b>adequately secured, which then it's sealed.</b></p> <p>10 <b>So there's no sense in my mind for him to</b></p> <p>11 <b>have to pull 10 feet out away from the --</b></p> <p>12 <b>away from the bay doors and say I'm going</b></p> <p>13 <b>to cut the seal you just put on after you</b></p> <p>14 <b>just got done telling me that you have your</b></p> <p>15 <b>own load straps, you don't need mine.</b></p> <p>16 <b>Q. The regulatory guidance that you're</b></p> <p>17 <b>referencing there is Federal Motor Carrier</b></p> <p>18 <b>Safety Regulation 392.9?</b></p> <p>19 <b>A. Correct.</b></p> <p>20 <b>Q. All right. And the industry standards of</b></p> <p>21 <b>care and/or best practices, you've</b></p> <p>22 <b>previously said that's based upon your</b></p> <p>23 <b>experience?</b></p>
<p>Page 50</p> <p>1 <b>Where it says it is highly probable</b></p> <p>2 <b>that a shipper, Knauf, accepts the burden</b></p> <p>3 <b>and the responsibility of adequate</b></p> <p>4 <b>securement and articles of cargo within the</b></p> <p>5 <b>subject CMV truck -- more specifically --</b></p> <p>6 <b>to your question, more specifically,</b></p> <p>7 <b>regulatory guidance as well as industry</b></p> <p>8 <b>standards of care and best practices</b></p> <p>9 <b>provide that the shipper seals the CMV</b></p> <p>10 <b>semitrailer.</b></p> <p>11 <b>All right. Again, that's why it says</b></p> <p>12 <b>"and/or." It's not -- it's not -- it</b></p> <p>13 <b>doesn't say "and." It doesn't say "or."</b></p> <p>14 <b>It says "and/or." It's one or the other.</b></p> <p>15 <b>So one of the three of those are going</b></p> <p>16 <b>to be applicable. We know based on a</b></p> <p>17 <b>regulatory requirement, the regulatory</b></p> <p>18 <b>department under FMCSR 392.7 -- and, by the</b></p> <p>19 <b>way, 393.100 -- that the articles of cargo</b></p> <p>20 <b>must be adequately secured. They were not</b></p> <p>21 <b>adequately secured, and it was</b></p> <p>22 <b>represented -- and that's the -- I think,</b></p> <p>23 <b>you know, you and I have a little struggle</b></p>	<p>Page 52</p> <p>1 <b>A. I'm sorry. One more time. You broke up</b></p> <p>2 <b>there.</b></p> <p>3 <b>Q. In the sentence that we are looking at, the</b></p> <p>4 <b>more specifically, regulatory guidance as</b></p> <p>5 <b>well as industry standards of care and/or</b></p> <p>6 <b>best practices, the industry standards of</b></p> <p>7 <b>care and/or best practices portion of that</b></p> <p>8 <b>sentence, that is based upon your</b></p> <p>9 <b>experience?</b></p> <p>10 <b>A. The best practices is -- if you look at a</b></p> <p>11 <b>best practice -- so best practice, we can</b></p> <p>12 <b>go and we can look at 393 -- and that's not</b></p> <p>13 <b>listed in here on the back of the report.</b></p> <p>14 <b>But if you look at 393.100, it will</b></p> <p>15 <b>specifically address load securement.</b></p> <p>16 <b>Okay. It talks about chains and cables and</b></p> <p>17 <b>straps and dunnage bags, DID bags, all</b></p> <p>18 <b>kinds of other things, blocking, bracing,</b></p> <p>19 <b>et cetera, et cetera.</b></p> <p>20 <b>So if you're looking at that, that is</b></p> <p>21 <b>to me industry standard. That's the</b></p> <p>22 <b>industry standard under -- from a</b></p> <p>23 <b>regulatory standpoint, 392.9 puts that</b></p>



<p style="text-align: right;">Page 53</p> <p>1 burden onto the driver, only receiving</p> <p>2 relief from that requirement under the</p> <p>3 regulation if the driver is not able to</p> <p>4 access the sealed load.</p> <p>5 And, again, if -- let me put it this</p> <p>6 way. They're switch loads; okay? A switch</p> <p>7 load. So if Mr. Ross picked up this load</p> <p>8 and he brought it from its origin at Knauf</p> <p>9 and he took it to Cordele -- he didn't take</p> <p>10 it quite to Cordele, Georgia. Say that he</p> <p>11 took it to Atlanta, Georgia. It's an</p> <p>12 interstate commerce movement, so therefore</p> <p>13 the full regulations apply.</p> <p>14 So he takes it to Atlanta, Georgia.</p> <p>15 Another truck comes up and picks up and</p> <p>16 connects to that semitrailer through -- it</p> <p>17 couples to this semitrailer and takes it to</p> <p>18 Cordele, Georgia. That -- then that driver</p> <p>19 now has the duty -- yes, he may have to cut</p> <p>20 the seal on that. And if he does cut the</p> <p>21 seal -- if he suspects that there's any</p> <p>22 kind of relative motion issues where you</p> <p>23 don't have securement and the cargo is</p>	<p style="text-align: right;">Page 55</p> <p>1 away. So that responsibility now becomes</p> <p>2 the responsibility of the loader, therefore</p> <p>3 Knauf.</p> <p>4 Q. Okay. So when you're talking about known</p> <p>5 responsibilities in that sentence, you are</p> <p>6 referencing load securement?</p> <p>7 A. Well, let's read it one more time just to</p> <p>8 make sure I'm in perfect context.</p> <p>9 More specifically, regulatory guidance</p> <p>10 as well as industry standards of care</p> <p>11 and/or best practices provide that when</p> <p>12 a -- when a shipper seals the CMV</p> <p>13 semitrailer their known responsibilities as</p> <p>14 to adequate control [sic] securement are</p> <p>15 heightened.</p> <p>16 They're heightened because they assumed</p> <p>17 that duty simply by stating -- that's where</p> <p>18 their responsibility is. And they accepted</p> <p>19 that duty to secure the articles of cargo</p> <p>20 effectively, and they didn't. What they --</p> <p>21 they accepted that by stating that we have</p> <p>22 our own straps, we don't need yours, get up</p> <p>23 in your truck tractor, take a nap, and</p>
<p style="text-align: right;">Page 54</p> <p>1 leaning up against doors and walls and</p> <p>2 things like that, you know, he may have to</p> <p>3 call his dispatch and say I need to cut</p> <p>4 this load. And I've seen that happen as</p> <p>5 well. And then he puts a lock on that</p> <p>6 afterwards to prevent theft.</p> <p>7 Q. Okay. In the sentence that we're looking</p> <p>8 at, what are the known responsibilities</p> <p>9 that you are referencing?</p> <p>10 A. Okay. I'm just trying to read where you</p> <p>11 were.</p> <p>12 So known responsibility -- known</p> <p>13 responsibility is going to be something</p> <p>14 that the shipper clearly accepted the fact</p> <p>15 that they had a -- they had loads and</p> <p>16 articles of cargo that were not loaded to</p> <p>17 the extent that they were adequately</p> <p>18 secured. So that's -- that would fall back</p> <p>19 on the responsibility -- when the driver --</p> <p>20 when the loader says to Mr. Ross, we got</p> <p>21 it -- and, again, I'll fall back on this</p> <p>22 all day long -- we got it. We have the</p> <p>23 straps. We don't need yours. Put them</p>	<p style="text-align: right;">Page 56</p> <p>1 we'll talk to you in a little while.</p> <p>2 Q. Okay. I'm just trying to identify what it</p> <p>3 is that constitutes a known responsibility,</p> <p>4 and in this case, in this sentence, you are</p> <p>5 referencing load securement?</p> <p>6 A. Known responsibility. Known -- at 393.100,</p> <p>7 that's -- I forget the subpart. But</p> <p>8 393.100 specifically talks about, again,</p> <p>9 the articles of cargo must be secured in a</p> <p>10 specific manner. That's what I'm referring</p> <p>11 to there.</p> <p>12 Then the duty falls back over to the</p> <p>13 392 part, 392.9 specifically, where the</p> <p>14 driver has the duty to make sure that the</p> <p>15 articles of cargo are adequately secured.</p> <p>16 However, the shipper sealed the load, and</p> <p>17 they notified -- they notified Mr. Ross we</p> <p>18 have our own straps, we don't need yours.</p> <p>19 That to me is very, very, very powerful.</p> <p>20 Q. When you say responsibilities are</p> <p>21 heightened, what do you mean by heightened?</p> <p>22 A. Well, they've been put on notice multiple</p> <p>23 times that their articles of cargo fall out</p>



<p style="text-align: right;">Page 57</p> <p>1 of the trailer all the time. So that to me</p> <p>2 would be -- they should be on a heightened</p> <p>3 alert as to this problem and provide simple</p> <p>4 strapping that's going to prevent the</p> <p>5 articles of cargo from toppling, cascading</p> <p>6 out of the trailer when it's opened. So</p> <p>7 the driver is offering him a set of straps,</p> <p>8 and he says, no, don't need them, got my</p> <p>9 own.</p> <p>10 Q. Okay. Heightened would generally mean more</p> <p>11 than they were before; correct?</p> <p>12 A. I'm sorry?</p> <p>13 Q. Heightened would generally mean more than</p> <p>14 it was before; correct?</p> <p>15 A. Well, I mean, heightened is heightened. I</p> <p>16 mean, allow the words to speak for</p> <p>17 themselves. I mean, you know, a heightened</p> <p>18 alert. You know, adequate cargo securement</p> <p>19 are heightened.</p> <p>20 It's always -- when you have any kind</p> <p>21 of stacked cargo, articles of cargo in the</p> <p>22 back of a semitrailer, you need to be on a</p> <p>23 heightened -- now, when he's -- he's in a</p>	<p style="text-align: right;">Page 59</p> <p>1 Q. Who is "we" in the sentence?</p> <p>2 A. I've got -- I've got -- sure. I've got</p> <p>3 five colleagues that work with me</p> <p>4 throughout the country, and I'm assigned on</p> <p>5 every case with each one of my colleagues.</p> <p>6 So we work -- each file we work together.</p> <p>7 Q. Okay. Ultimately the opinions that are in</p> <p>8 the report, though, are those of you;</p> <p>9 correct?</p> <p>10 A. I own the opinions. That's correct.</p> <p>11 Q. Okay. And so to the extent your opinion</p> <p>12 relies upon evidence within the documents</p> <p>13 you reviewed, you've referenced it in the</p> <p>14 report. Is that accurate?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. Did you consider -- strike that.</p> <p>17 I have seen in your report where you</p> <p>18 reference guidance question 3 to section</p> <p>19 392.9. Did you --</p> <p>20 A. Where are you referring to, please?</p> <p>21 Q. Absolutely. So if we look on page 11 of</p> <p>22 your report, the bottom third or so -- let</p> <p>23 me know when you're ready.</p>
<p style="text-align: right;">Page 58</p> <p>1 coffee break and he's having coffee. Is</p> <p>2 that a heightened level of alert for cargo</p> <p>3 securement? Of course not. Kind of a</p> <p>4 ridiculous statement.</p> <p>5 But, you know, is it a -- is it a</p> <p>6 requirement to be on a heightened level of</p> <p>7 alert when you as the dockman said don't</p> <p>8 need your straps?</p> <p>9 Yeah, it kind of does put that burden</p> <p>10 onto the shipper.</p> <p>11 Q. Okay. Did you review Knauf's responses to</p> <p>12 the interrogatories?</p> <p>13 A. Everything that's listed in the back here</p> <p>14 we reviewed. If you look at ...</p> <p>15 Q. Okay.</p> <p>16 A. Hold on.</p> <p>17 Q. Are you aware of how many --</p> <p>18 A. Hold on one second. Hold on one second.</p> <p>19 You asked a question. Let me answer it.</p> <p>20 So if you look at page 27, we reviewed</p> <p>21 all the files that were on that page 27</p> <p>22 there for a complete file for us insofar as</p> <p>23 we were concerned.</p>	<p style="text-align: right;">Page 60</p> <p>1 A. Yes, I'm ready.</p> <p>2 Q. All right. You reference to the regulatory</p> <p>3 guidance section of Federal Motor Carrier</p> <p>4 Safety Regulation 392.9, specifically</p> <p>5 question 3; correct?</p> <p>6 A. Correct.</p> <p>7 Q. All right. Did you take into consideration</p> <p>8 any of the other guidance questions or</p> <p>9 answers for section 392.9?</p> <p>10 A. Well, I have it here -- that was the most</p> <p>11 relative one. But if you look at</p> <p>12 question 4, which we didn't put in the</p> <p>13 report, it says -- question 4 -- and I'm</p> <p>14 reading this right out of the regulation.</p> <p>15 And this is under DOT interpretive issue</p> <p>16 392.9.</p> <p>17 It says: Is there -- question 4: Is</p> <p>18 there a requirement that the driver must</p> <p>19 personally load, block, brace, and tie down</p> <p>20 the cargo on the property-carrying</p> <p>21 commercial motor vehicle he drives?</p> <p>22 Guidance: No. But the driver is</p> <p>23 required to be familiar with the methods.</p>

<p>Page 61</p> <p>1 So did we put everything in here, no.</p> <p>2 Did we put what was most relevant, yes.</p> <p>3 Because if you look at this one here in</p> <p>4 question 3, it says guidance -- which is in</p> <p>5 the report on page 11. It says: Under</p> <p>6 these circumstances, a motor carrier --</p> <p>7 important word here -- may fulfill its</p> <p>8 responsibilities for proper loading a</p> <p>9 number of ways. Examples are: A, arrange</p> <p>10 for supervision of loading to determine</p> <p>11 compliance; or, B, obtain notation on the</p> <p>12 connecting bill freight -- line freight</p> <p>13 bill that the loading [sic] was properly</p> <p>14 loaded.</p> <p>15 Q. And C is to obtain approval to break the</p> <p>16 seal to permit inspection; correct?</p> <p>17 A. Correct. That's on page 12.</p> <p>18 Q. Okay. Did Mr. Ross do any of the three</p> <p>19 examples that were in guidance question 3?</p> <p>20 A. No. Because he had a reasonable</p> <p>21 expectation that the shipper -- the</p> <p>22 shipper's loader, as referenced by Weldon,</p> <p>23 actually secured the articles of cargo</p>	<p>Page 63</p> <p>1 requirement to go ahead and open it up.</p> <p>2 There was nothing that led him to that</p> <p>3 conclusion, because, again -- I know the</p> <p>4 word index is going to be loaded with this</p> <p>5 term -- but Mr. Ross had the right of</p> <p>6 reasonable expectation by stating that I</p> <p>7 was offered -- I offered my straps, they</p> <p>8 rejected my straps and said we have our</p> <p>9 own.</p> <p>10 What does that mean?</p> <p>11 What that means to me as a former</p> <p>12 driver myself many years ago in another</p> <p>13 life and having all the experience that I</p> <p>14 have of thousands of commercial motor</p> <p>15 vehicle crashes in my career, I take that</p> <p>16 as the driver pretty much expected -- had a</p> <p>17 reasonable expectation that the articles of</p> <p>18 cargo were adequately secured before he</p> <p>19 took this CMV load into commerce.</p> <p>20 Q. Okay. Heartland did not undertake to</p> <p>21 perform any of the three examples provided</p> <p>22 in question 3 guidance to section 392.9;</p> <p>23 correct?</p>
<p>Page 62</p> <p>1 because he rejected the straps from</p> <p>2 Mr. Ross and said we don't need your</p> <p>3 straps, go back to your truck, we have our</p> <p>4 own.</p> <p>5 So I base it on that. And then I look</p> <p>6 at that and say is there any logic at all</p> <p>7 to a CMV driver -- professional CMV driver</p> <p>8 that has a motor carrier with an excellent</p> <p>9 reputation and an excellent safety</p> <p>10 record -- is there any requirement for that</p> <p>11 driver to pull his truck 10 feet away from</p> <p>12 the loading dock, go back to the loading</p> <p>13 dock to say give me a pair of wire cutters,</p> <p>14 I'm going to open up the seal. They're</p> <p>15 going to turn around and ask him if he's</p> <p>16 out of his mind; right?</p> <p>17 Does he have a duty to do that?</p> <p>18 No, he does not, especially when you</p> <p>19 have a situation where if he had reasonable</p> <p>20 expectation that the articles of cargo were</p> <p>21 not secured -- that's the thing. If he had</p> <p>22 reasonable expectation that the articles of</p> <p>23 cargo were not secured, then he has a</p>	<p>Page 64</p> <p>1 A. I just -- I just answered that. I mean --</p> <p>2 Q. No. The first time you answered as to</p> <p>3 Ross. I'm asking as to Heartland.</p> <p>4 Heartland.</p> <p>5 A. 390.11 of the Federal Motor Carrier Safety</p> <p>6 Regulations state that any duty and/or</p> <p>7 prohibition of a driver is likewise that of</p> <p>8 a motor carrier.</p> <p>9 So in that case there, the motor</p> <p>10 carrier relied upon Mr. Ross'</p> <p>11 professionalism in determining that the</p> <p>12 articles of cargo were adequately secured</p> <p>13 by way of him rejecting -- the loader</p> <p>14 rejecting the straps from Mr. Ross and</p> <p>15 saying we have our own, we will put them</p> <p>16 on, and then -- I guess that's all -- the</p> <p>17 only way I can answer that.</p> <p>18 Q. Okay. I would like to look at the bottom</p> <p>19 of page 12 of your report.</p> <p>20 A. Sure.</p> <p>21 Q. The paragraph that starts with "however."</p> <p>22 Let me know when you're there.</p> <p>23 A. Yeah, I'm there.</p>

<p>Page 65</p> <p>1 Q. Okay. You within this paragraph talk about</p> <p>2 industry best practices, standards of care</p> <p>3 and/or logistical practicality would</p> <p>4 suggest --</p> <p>5 <b>A. Excuse me. So it's not all chopped up</b></p> <p>6 <b>here, let me please read this real quick</b></p> <p>7 <b>and make sure that we're getting it in</b></p> <p>8 <b>context.</b></p> <p>9 Q. Okay.</p> <p>10 <b>A. Okay.</b></p> <p>11 Q. Okay. Within this paragraph, you are</p> <p>12 referencing industry best practices and/or</p> <p>13 standards of care or logistical</p> <p>14 practicality. What specifically are the</p> <p>15 bases for those?</p> <p>16 <b>A. Well, first of all, industry best</b></p> <p>17 <b>practices, if you're going to look at it in</b></p> <p>18 <b>terms of a motor carrier, they have a duty</b></p> <p>19 <b>to comply with 393.100.</b></p> <p>20 <b>Let me confirm that. I'm pretty sure</b></p> <p>21 <b>it's 393.100.</b></p> <p>22 <b>Yeah. Subpart (i). Subpart (i),</b></p> <p>23 <b>protection against falling cargo, 393.100.</b></p>	<p>Page 67</p> <p>1 <b>A. Sure.</b></p> <p>2 Q. You give a description of the Cameron</p> <p>3 Ashley facilities. Did you actually go to</p> <p>4 the site of Cameron Ashley's --</p> <p>5 <b>A. No, ma'am.</b></p> <p>6 Q. -- Cordele location?</p> <p>7 <b>A. No, ma'am. You know, something like that,</b></p> <p>8 <b>there's no really -- no real reason for us</b></p> <p>9 <b>to go there. It just doesn't make any</b></p> <p>10 <b>sense to run an invoice up for no reason.</b></p> <p>11 <b>It just -- sometimes we do; sometimes we</b></p> <p>12 <b>don't.</b></p> <p>13 Q. Okay. At the bottom of page 14 and then</p> <p>14 continuing onto page 15, you make reference</p> <p>15 to --</p> <p>16 <b>A. Let me read it, please. Please allow me to</b></p> <p>17 <b>read it. Thank you.</b></p> <p>18 <b>Okay.</b></p> <p>19 Q. All right. On the bottom of page 14 and</p> <p>20 continuing onto page 15 of your report, you</p> <p>21 reference an email from Heartland relating</p> <p>22 to best practices for opening trailer doors</p> <p>23 that was sent to Knauf in 2019; correct?</p>
<p>Page 66</p> <p>1 <b>So the motor carrier has a duty to</b></p> <p>2 <b>comply with this; okay? The shipper does</b></p> <p>3 <b>not have a duty to comply with this.</b></p> <p>4 <b>However, it can be used as a basis of best</b></p> <p>5 <b>practices. Because articles of cargo have</b></p> <p>6 <b>to be secured. They have to be secured</b></p> <p>7 <b>before operating -- or before the articles</b></p> <p>8 <b>of cargo are taken into commerce by way of</b></p> <p>9 <b>commercial motor vehicle, motor carriage</b></p> <p>10 <b>operation.</b></p> <p>11 <b>So looking at subpart (i), they had --</b></p> <p>12 <b>irrespective of them not being held to</b></p> <p>13 <b>compliance, but at best practice, they're</b></p> <p>14 <b>assuming that role by saying leave your</b></p> <p>15 <b>straps in your truck, don't bring them, we</b></p> <p>16 <b>don't need them, we have our own, thank you</b></p> <p>17 <b>very much, go to sleep -- or go back to</b></p> <p>18 <b>your cab.</b></p> <p>19 <b>So that right there, 393.100,</b></p> <p>20 <b>subpart (i), would be that best practice</b></p> <p>21 <b>that we keep referring to.</b></p> <p>22 Q. All right. Looking at page 13 of your</p> <p>23 report.</p>	<p>Page 68</p> <p>1 <b>A. Correct.</b></p> <p>2 Q. All right. Why is this important to your</p> <p>3 opinion?</p> <p>4 <b>A. It was just because -- what it is, it</b></p> <p>5 <b>demonstrates that -- when you read the</b></p> <p>6 <b>testimony of Ross -- and if you go to page</b></p> <p>7 <b>15 -- you read the testimony of Ross, he</b></p> <p>8 <b>pretty much did exactly what he was</b></p> <p>9 <b>supposed to do. Unfortunately, the wind</b></p> <p>10 <b>caught the door, and when the wind caught</b></p> <p>11 <b>the door, he unfortunately had a cascading</b></p> <p>12 <b>of the articles of cargo onto him. That</b></p> <p>13 <b>has happened numerous times under</b></p> <p>14 <b>Knauf-loaded CMVs, but they chose not to do</b></p> <p>15 <b>anything about it.</b></p> <p>16 Q. Okay. Do you believe that as described in</p> <p>17 the email from Heartland to Knauf that</p> <p>18 represents best practices for opening a</p> <p>19 tractor-trailer door?</p> <p>20 <b>A. I believe that it's a good representation.</b></p> <p>21 Q. Okay.</p> <p>22 <b>A. Would it be an exact representation if I</b></p> <p>23 <b>were to sit down and write it myself?</b></p>

<p>Page 69</p> <p>1 Perhaps I'm going to tweak a word here</p> <p>2 or there, but in general it's a good --</p> <p>3 it's a good policy.</p> <p>4 Q. Okay. Does it matter to your opinion</p> <p>5 that -- whether or not this best practices</p> <p>6 or this email from Heartland was ever given</p> <p>7 to Mr. Ross?</p> <p>8 A. No. But, again, based on -- based on</p> <p>9 the -- based on his testimony, he pretty</p> <p>10 much did almost exactly what you have here,</p> <p>11 okay, what the descriptive is in terms of</p> <p>12 what he's supposed to do as a CMV driver in</p> <p>13 opening up the barn door -- call it barn</p> <p>14 doors -- cargo doors on a semitrailer.</p> <p>15 So he had opened up the one on the</p> <p>16 right first because you can't open up the</p> <p>17 one on the left. It's mechanically</p> <p>18 impossible. And then you open up the one</p> <p>19 on --- there's a certain way to do it.</p> <p>20 So this descriptive gives that</p> <p>21 information, and then his testimony --</p> <p>22 Mr. Ross' testimony reflects exactly that.</p> <p>23 So in my mind, I'm looking at that and</p>	<p>Page 71</p> <p>1 A. I don't quite frankly recall any specifics</p> <p>2 on it at the moment in time. I mean, I</p> <p>3 certainly -- I just don't recall</p> <p>4 specifically on that.</p> <p>5 Q. Okay. Would it be your opinion that it</p> <p>6 would be Heartland's responsibility as</p> <p>7 Mr. Ross' employer and also as a motor</p> <p>8 carrier to make sure that Mr. Ross was</p> <p>9 trained on how to safely open those trailer</p> <p>10 doors?</p> <p>11 A. Sure. And, again, if you look at the --</p> <p>12 their safety record, it's highly suggestive</p> <p>13 to me that they do take a lot of pride in</p> <p>14 making sure that their drivers are</p> <p>15 adequately and effectively trained.</p> <p>16 Because they have to comply with 390.3,</p> <p>17 paragraph (e)(1) and (e)(2), of the Federal</p> <p>18 Motor Carrier Safety Regulations in making</p> <p>19 sure that their drivers are effectively</p> <p>20 trained for operating commercial motor</p> <p>21 vehicles in interstate commerce.</p> <p>22 Q. Does it matter to you, Mr. Turner, that</p> <p>23 Heartland does not have a policy to use</p>
<p>Page 70</p> <p>1 saying, you know what, it sounds to me --</p> <p>2 and I have a right to be able to consider</p> <p>3 that -- it sounds to me as if he were</p> <p>4 effectively trained in that.</p> <p>5 And you also look at -- once again, you</p> <p>6 look at driver fitness under SMS or -- for</p> <p>7 the motor carrier. It's -- it's</p> <p>8 considerably low. I mean, they were</p> <p>9 .6 percent national average of vehicle out</p> <p>10 of service. That's -- that's -- quite</p> <p>11 frankly, it's amazing.</p> <p>12 Excuse me. Driver out of service.</p> <p>13 Driver out of service rate was .6</p> <p>14 compared to a national average of 6.0.</p> <p>15 I mean, so that tells me that they take a</p> <p>16 concerted effort in making sure that their</p> <p>17 drivers are effectively and properly</p> <p>18 trained. Because you don't get those</p> <p>19 scores by not training. That I can assure</p> <p>20 you.</p> <p>21 Q. Have you seen any evidence of Heartland</p> <p>22 training Mr. Ross on how to open</p> <p>23 tractor-trailer doors?</p>	<p>Page 72</p> <p>1 load straps?</p> <p>2 A. I'm sorry?</p> <p>3 Q. Does it matter to your opinions at all that</p> <p>4 Heartland does not have a policy to use</p> <p>5 load straps?</p> <p>6 MS. DYE: Object to the form.</p> <p>7 A. Use load straps?</p> <p>8 Q. Yes, sir.</p> <p>9 A. Would it matter to me?</p> <p>10 In this case here, not really, because</p> <p>11 the assumption of -- the assumption -- I</p> <p>12 shouldn't use the word assumption -- the</p> <p>13 expectation -- the reasonable expectation</p> <p>14 of Mr. Ross was that they applied the</p> <p>15 straps.</p> <p>16 He was getting out to give them the</p> <p>17 straps to be able to apply them. They</p> <p>18 said, no, get back in your truck. So he</p> <p>19 had the reasonable expectation.</p> <p>20 So whether they trained him or not,</p> <p>21 he -- it really doesn't matter because he</p> <p>22 never had opportunity to be able to apply</p> <p>23 that training by installing straps, straps</p>

<p>Page 73</p> <p>1 meaning for the articles of cargo.</p> <p>2 Q. The last question did not relate to</p> <p>3 training. The last question was whether it</p> <p>4 would matter to your opinions that</p> <p>5 Heartland does not have a policy to use</p> <p>6 load straps.</p> <p>7 MS. DYE: Same objection.</p> <p>8 A. Right. And I did address that.</p> <p>9 I addressed it in looking at training and</p> <p>10 policy.</p> <p>11 So if they have no specific policy --</p> <p>12 because understanding is that -- they're a</p> <p>13 common carrier. Common carriers today</p> <p>14 carry widgets, tomorrow insulation, the</p> <p>15 next day refrigerator doors. You cannot</p> <p>16 train on every single thing. You can train</p> <p>17 on flatbeds. You can train on</p> <p>18 semitrailers. But you talk about applying</p> <p>19 load bars. You talk about applying straps.</p> <p>20 You talk about applying webbing and netting</p> <p>21 and DID bags and all of these other things.</p> <p>22 So in terms of policy, to come up with</p> <p>23 a policy for every article of cargo that a</p>	<p>Page 75</p> <p>1 to --</p> <p>2 Q. I'm just asking for clarification based on</p> <p>3 what you just said of walking down the side</p> <p>4 of the trailer. If that was not intended</p> <p>5 to actually be part of what you believe</p> <p>6 happened, that's fine. I'm just asking for</p> <p>7 that clarified.</p> <p>8 A. Okay. If he didn't walk down the side of</p> <p>9 his trailer somewhere at Knauf, he</p> <p>10 encountered the loader and offered his</p> <p>11 straps and he was -- he said, no, don't</p> <p>12 need them, have my own.</p> <p>13 Q. All right. Mr. Ross has a commercial</p> <p>14 driver's license; correct?</p> <p>15 A. CDL-A, correct.</p> <p>16 Q. Okay. And what does a CDL-A designate?</p> <p>17 A. It designates him to be able to operate a</p> <p>18 commercial motor vehicle that's over</p> <p>19 26,001 pounds with a 10,000-pound coupled</p> <p>20 semitrailer or trailer, so any combination</p> <p>21 thereof. And it's an articulated number,</p> <p>22 so meaning coupled is you have a fifth</p> <p>23 wheel with a kingpin. You marry the two of</p>
<p>Page 74</p> <p>1 common carrier may transport is almost</p> <p>2 impossible, if not impossible. It would be</p> <p>3 volumes and volumes and volumes of books.</p> <p>4 So do I think that that's reasonable, no.</p> <p>5 In general, to talk about securing</p> <p>6 articles of cargo -- clearly, you know,</p> <p>7 he -- Mr. Ross knew that the articles of</p> <p>8 cargo had to be secured because what he was</p> <p>9 doing was walking down the side of his</p> <p>10 trailer and sits there and goes, hey,</p> <p>11 here's my straps, use those. And then the</p> <p>12 motor carrier turns around and -- excuse</p> <p>13 me -- the loader sits there and goes, no,</p> <p>14 don't need them, go ahead, go back to your</p> <p>15 sleep, we have straps of our own. That's a</p> <p>16 reasonable assumption that they used the</p> <p>17 straps.</p> <p>18 Q. You believe Mr. Ross' testimony indicates</p> <p>19 he was next to the trailer when that</p> <p>20 discussion occurred?</p> <p>21 A. If we're going to get like that -- all</p> <p>22 right. I'm assuming he was somewhere</p> <p>23 around his trailer. I mean, if you want</p>	<p>Page 76</p> <p>1 them together and you drive down the road.</p> <p>2 So that's a Class A CDL, as opposed to</p> <p>3 a Class B, which is 26,000 pounds without a</p> <p>4 coupled 10,000-pound trailer.</p> <p>5 (Brief interruption by the court</p> <p>6 reporter.)</p> <p>7 Q. Okay. And Mr. Ross attended commercial</p> <p>8 driving school as well; correct?</p> <p>9 A. I can't say that one way or the other. I</p> <p>10 mean, I believe he did. I believe he did</p> <p>11 when he -- and got his -- when he got his</p> <p>12 CDL, but I'm not a hundred-percent certain</p> <p>13 if he was grandfathered in. But I do know</p> <p>14 that the motor carrier does provide</p> <p>15 additional training as well, and it's just</p> <p>16 evidenced by their incredible safety record</p> <p>17 of drivers out-of-service rate.</p> <p>18 Q. Okay. And Mr. Ross has approximately</p> <p>19 20 years' experience of driving</p> <p>20 tractor-trailer trucks?</p> <p>21 A. Yeah, something like that, if I recall</p> <p>22 correctly. And that's what I'm saying is</p> <p>23 that I don't know if he was in under the</p>

<p style="text-align: right;">Page 77</p> <p>1 wire of the CDL requirements and he was</p> <p>2 grandfathered in or whatever the case may</p> <p>3 be. That's why I've kind of refrained from</p> <p>4 saying that he went to CDL school, as I</p> <p>5 think you referred or something like that.</p> <p>6 Q. Okay. But certainly Mr. Ross is not a new</p> <p>7 commercial driver. He's got experience;</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. Does Mr. Ross as a commercial driver</p> <p>11 have any obligation to refresh or maintain</p> <p>12 his knowledge as to how to safely operate</p> <p>13 his motor vehicle?</p> <p>14 A. He does.</p> <p>15 Q. Okay. And would that include an obligation</p> <p>16 to remain current and fresh as to safety of</p> <p>17 opening the back of the trailer?</p> <p>18 A. You know, that's a very light subject in</p> <p>19 the FMCSRs. So even though commercial</p> <p>20 motor vehicles are still regulated by the</p> <p>21 regulation -- by FMCSRs on private</p> <p>22 property, so loading docks, et cetera,</p> <p>23 it's -- it's not a -- it's not -- there's</p>	<p style="text-align: right;">Page 79</p> <p>1 with the regulations: Number 1, every</p> <p>2 employer shall be knowledgeable and comply</p> <p>3 with all the regulations contained in this</p> <p>4 subchapter which are applicable to that</p> <p>5 motor carrier's operation.</p> <p>6 And then (e)(2) -- and that's (e)(1).</p> <p>7 (E)(2), every driver and employee shall</p> <p>8 be instructed regarding and shall comply</p> <p>9 with all applicable regulations contained</p> <p>10 in this subchapter.</p> <p>11 I'm reading Mr. Ross' testimony, and</p> <p>12 I'm saying to myself this guy has got a</p> <p>13 good record. There's no indication to me</p> <p>14 whatsoever that he was not effectively</p> <p>15 trained in order to be able to operate a</p> <p>16 commercial motor vehicle safely and</p> <p>17 effectively, in addition to making sure</p> <p>18 that he secured his articles of cargo</p> <p>19 effectively if he were in charge of doing</p> <p>20 that.</p> <p>21 Number 3 is that he knew how to open up</p> <p>22 the barn doors on the back of a</p> <p>23 semitrailer. You open the right door first</p>
<p style="text-align: right;">Page 78</p> <p>1 not -- there's nothing in the regulations</p> <p>2 that speaks to exactly how a driver is to</p> <p>3 open a semitrailer barn door.</p> <p>4 Q. Outside of the Federal Motor Carrier Safety</p> <p>5 Regulation, is there anything that provides</p> <p>6 bases that a driver should know as to how</p> <p>7 to safely open the door?</p> <p>8 A. That's a matter of training. That's a</p> <p>9 matter of training. And that's why you can</p> <p>10 see this policy -- this policy pretty much</p> <p>11 exemplifies exactly how you would open a</p> <p>12 trailer door. Then you read Mr. Ross'</p> <p>13 testimony, and it pretty much reflects</p> <p>14 exactly what the policy is.</p> <p>15 So going back, I had mentioned to</p> <p>16 you -- because you asked about training --</p> <p>17 I had mentioned to you earlier about 390.3</p> <p>18 and paragraph (e)(2).</p> <p>19 I just pulled my reg up, and I'll read</p> <p>20 it into the record real quick because</p> <p>21 that's about the knowledge and compliance</p> <p>22 with the regulations.</p> <p>23 It says, (E), knowledge and compliance</p>	<p style="text-align: right;">Page 80</p> <p>1 because you have no choice because</p> <p>2 mechanically there is no choice. You open</p> <p>3 up the right barn door first, and you do</p> <p>4 that specifically and methodically. And</p> <p>5 then you go to the left-side door, which</p> <p>6 is the driver's side, and you do that</p> <p>7 specifically and methodically.</p> <p>8 But nobody in that specific and</p> <p>9 methodic process anticipates a gust of wind</p> <p>10 coming and blowing that door and causing</p> <p>11 what happened here with the articles of</p> <p>12 cargo to topple down on him nonprotected by</p> <p>13 the door.</p> <p>14 Q. Okay. Do you identify within your report</p> <p>15 what you believe to be the best practices</p> <p>16 for opening a tractor-trailer door or barn</p> <p>17 doors as you're calling them?</p> <p>18 A. Well, we're relying upon the -- on page 15</p> <p>19 of the report -- of our report here where</p> <p>20 it talks about never open both doors at</p> <p>21 once.</p> <p>22 Well, that's an impossibility anyway</p> <p>23 unless you have both of them unlatched.</p>

<p>Page 81</p> <p>1 So we're -- there's no reason for us to</p> <p>2 write up some specific process or protocol</p> <p>3 or policy or, you know, things of that</p> <p>4 nature. We're going to rely upon the motor</p> <p>5 carrier's policy. That just makes sense.</p> <p>6 Q. But does it make sense, say, if that policy</p> <p>7 had not been communicated to Mr. Ross?</p> <p>8 A. Again, whether it was verbally or written</p> <p>9 or however, he did almost exactly --</p> <p>10 exactly what was required there. So if he</p> <p>11 didn't receive a policy, he certainly</p> <p>12 received some type of training at some</p> <p>13 point because he reflected almost exactly</p> <p>14 how to do it with exception to the wind</p> <p>15 gust that blew the driver's side door</p> <p>16 open -- or blew it into him.</p> <p>17 So he reflected almost exactly what</p> <p>18 this policy says. If you look at never</p> <p>19 open both doors at once, we know that.</p> <p>20 And it says on the fifth bullet down on</p> <p>21 page 15 -- it says stand directly in front</p> <p>22 of the right door using your left hand to</p> <p>23 release the latch while holding the door</p>	<p>Page 83</p> <p>1 I remember correctly, to open the latch,</p> <p>2 and then he used the left hand to begin to</p> <p>3 open the door.</p> <p>4 Now, I know that your -- your expert --</p> <p>5 he was critical of the term "parallel."</p> <p>6 Well, I'm not a human factors expert like</p> <p>7 he is, so I can't sit here and tell you</p> <p>8 exactly where -- you know, where Mr. Ross</p> <p>9 was when that happened. But it appears</p> <p>10 very strongly to us that he took care, made</p> <p>11 sure that he was protecting himself by the</p> <p>12 door, but the wind caught the door, an</p> <p>13 unexpected event.</p> <p>14 Q. If Mr. Ross were in fact not standing</p> <p>15 behind the door with his left hand on the</p> <p>16 door while opening the left side, would you</p> <p>17 believe that to satisfy the best practices?</p> <p>18 A. One more time. I'm trying to configure</p> <p>19 this while you're saying it.</p> <p>20 Q. Absolutely.</p> <p>21 If Mr. Ross were not standing behind</p> <p>22 the door while opening the left side with</p> <p>23 his left hand on the door, would you</p>
<p>Page 82</p> <p>1 with your right hand. He said he did that.</p> <p>2 If there is stock -- if there's stock</p> <p>3 against the door and the door would push</p> <p>4 you out and this way -- he checked if there</p> <p>5 was any stock that was bulging against the</p> <p>6 doors, and there was -- there was none.</p> <p>7 And the right-hand side, by the way,</p> <p>8 the curbside, never cascaded out. It was</p> <p>9 the driver's side that cascaded out.</p> <p>10 And then the last bullet point, it says</p> <p>11 once the door -- once the first door is</p> <p>12 fully opened and latched correctly, open</p> <p>13 the left door using your right hand --</p> <p>14 And he even specified and specifically</p> <p>15 said he used his right hand, he said,</p> <p>16 because I'm right-handed.</p> <p>17 -- door handle to your left hand on the</p> <p>18 door.</p> <p>19 He did -- he did almost exactly what he</p> <p>20 was told to do.</p> <p>21 Q. Did Mr. Ross have his left hand on the door</p> <p>22 while opening the left side of the trailer?</p> <p>23 A. And the right. He used the right hand, if</p>	<p>Page 84</p> <p>1 consider that to satisfy the best</p> <p>2 practices?</p> <p>3 A. I'll -- again, I'll allow this document to</p> <p>4 speak for itself in terms of best practices</p> <p>5 because I agree with this document in terms</p> <p>6 of best practices on -- where it says once</p> <p>7 the first door is fully opened and latched</p> <p>8 correctly, open the left door using your</p> <p>9 right hand on the door latch handle and</p> <p>10 left on the door.</p> <p>11 He did this. So I'm relying upon this</p> <p>12 policy here that was forwarded to Knauf.</p> <p>13 And I agree with this. I agree with this</p> <p>14 policy. I can't decipher that out any more</p> <p>15 than that.</p> <p>16 Q. When you are walking -- strike that.</p> <p>17 When the driver is walking the left</p> <p>18 door, okay --</p> <p>19 A. When he's walking?</p> <p>20 Q. When he's walking with the left door; okay?</p> <p>21 You're opening the left door. Is he</p> <p>22 walking backward or forward?</p> <p>23 A. We're referring to -- we are referring to</p>



<p>Page 85</p> <p>1 the driver's side door; correct? Because</p> <p>2 it's curbside and driver's side which</p> <p>3 sometimes can confuse left and right.</p> <p>4 Q. Yes. We can use the driver's side door.</p> <p>5 When the driver is opening the driver's</p> <p>6 side door of a trailer and they are walking</p> <p>7 with the door, are they walking backwards</p> <p>8 or are they walking forward?</p> <p>9 MS. DYE: Object to the form.</p> <p>10 A. You would want to -- all I could tell you</p> <p>11 is that you want to protect yourself with</p> <p>12 that door. And that was being done --</p> <p>13 according to Mr. Ross, that was being done</p> <p>14 until the wind caught the door. All bets</p> <p>15 are off at that point.</p> <p>16 Q. All right. And when you say the driver</p> <p>17 would be using whatever means to protect</p> <p>18 themselves with the door, you mean to have</p> <p>19 the door in between them and the cargo?</p> <p>20 A. If the door gets blown away from him --</p> <p>21 blown into him, blown away from him,</p> <p>22 whatever the case may be, it just -- it</p> <p>23 changes all the dynamics. So policy is --</p>	<p>Page 87</p> <p>1 to that issue in the regulations or</p> <p>2 standards of care or best practices for</p> <p>3 that matter.</p> <p>4 Q. I'd like to take you to page 19 of your</p> <p>5 report, please.</p> <p>6 A. Sure. Can we take a quick five, please?</p> <p>7 Q. Sure. Absolutely. We can go off the</p> <p>8 record.</p> <p>9 A. Thank you.</p> <p>10 THE VIDEOGRAPHER: We are off the</p> <p>11 record. The time is 2:38 p.m.</p> <p>12 (A recess was taken.)</p> <p>13 THE VIDEOGRAPHER: We are back on</p> <p>14 the record. The time is</p> <p>15 2:46 p.m.</p> <p>16 Q. (By Ms. Baugh:) Okay, Mr. Turner. Right</p> <p>17 before we went to the break we were</p> <p>18 starting to direct our attention to page 19</p> <p>19 of your June report. So I will reshare my</p> <p>20 screen so we are looking at the same thing.</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. All right. Now, Mr. Turner, the second to</p> <p>23 the last paragraph there, it starts with it</p>
<p>Page 86</p> <p>1 it becomes a totally different issue.</p> <p>2 Q. Okay.</p> <p>3 A. But there's no policy written in here that</p> <p>4 says in the event that the door is blown,</p> <p>5 make sure that you, you know, dive</p> <p>6 behind -- it's just nonsensical.</p> <p>7 Q. I'm not asking about with a situation of</p> <p>8 wind. When a driver is opening the</p> <p>9 driver's side door to a tractor-trailer,</p> <p>10 are they supposed to keep the door between</p> <p>11 themselves and the load?</p> <p>12 A. They're supposed to, but when you have a</p> <p>13 door get blown open, like I said, where do</p> <p>14 you go at that point? What are you</p> <p>15 supposed to do?</p> <p>16 A door gets blown open, blown closed.</p> <p>17 It changes all the dynamics. Are you</p> <p>18 supposed to drive behind the ICC bar?</p> <p>19 No. It's nonsensical. It's just --</p> <p>20 you can't sit here and say what are you --</p> <p>21 what was he supposed to do when the door</p> <p>22 got blown -- blown by heavy wind. There's</p> <p>23 nothing out there that talks -- that speaks</p>	<p>Page 88</p> <p>1 is clear from Ross' statements. Would you</p> <p>2 like a moment to read that sentence before</p> <p>3 I ask you any questions?</p> <p>4 A. Yes. Let me read it, please.</p> <p>5 Yeah. We can make -- it's supposed to</p> <p>6 be CMV as opposed to CV, but go ahead.</p> <p>7 Q. That's fine.</p> <p>8 If Mr. Ross when opening the back of</p> <p>9 the trailer doors had noticed any cargo</p> <p>10 shift, would that have changed how he</p> <p>11 should have opened the trailer doors?</p> <p>12 A. Not -- well, I mean, it's hard to make a</p> <p>13 determination of cargo shift if you didn't</p> <p>14 see it before it was closed and sealed. So</p> <p>15 you really don't know if it was in effect a</p> <p>16 true cargo shift because you don't know</p> <p>17 what it looked like -- you know, he's</p> <p>18 looking at that from the ground, and they</p> <p>19 could have been 8-foot-long bales of</p> <p>20 insulation for all he knew. You know, he</p> <p>21 didn't have any specific knowledge as to</p> <p>22 the condition when he left.</p> <p>23 So to be able to make a</p>



<p style="text-align: right;">Page 89</p> <p>1 determination -- now, what he's referring</p> <p>2 to later is that he says that the -- the</p> <p>3 articles of cargo, the insulation, the</p> <p>4 right-hand side, it looked like it was a</p> <p>5 little bit disheveled -- not disheveled --</p> <p>6 but a little bit out of skew, and then the</p> <p>7 left-hand side appeared to be the same when</p> <p>8 he started to open that door and remained</p> <p>9 standing. It wasn't pressing up against</p> <p>10 the door, he said as well.</p> <p>11 Q. If a driver opening the back of the</p> <p>12 tractor-trailer upon looking in believes</p> <p>13 that the load has shifted, does it change</p> <p>14 how the driver should open the back of the</p> <p>15 door?</p> <p>16 A. No. If he sees that the articles of cargo</p> <p>17 are -- again, he cannot make an absolute</p> <p>18 determination as to whether there was any</p> <p>19 effective shifting of the cargo -- the</p> <p>20 articles of cargo. So if he looks at it</p> <p>21 and he determines that there is some type</p> <p>22 of disheveled appearance to the articles of</p> <p>23 cargo, then at that point there he should</p>	<p style="text-align: right;">Page 91</p> <p>1 door open.</p> <p>2 Q. Okay.</p> <p>3 A. Excuse me one second.</p> <p>4 THE VIDEOGRAPHER: Do y'all want</p> <p>5 to go off the record real</p> <p>6 quick?</p> <p>7 THE WITNESS: No, no. I'm back.</p> <p>8 I'm sorry. The advantage of</p> <p>9 depositing out of a hotel room</p> <p>10 with two dogs.</p> <p>11 Q. So for this question I'm not asking about</p> <p>12 Mr. Ross specifically. I'm trying to</p> <p>13 understand how a driver is supposed to open</p> <p>14 the back of a trailer door.</p> <p>15 So I believe you had indicated if the</p> <p>16 driver opens the door and believes that</p> <p>17 there is either shifting or the load is</p> <p>18 pressing against the door, they should not</p> <p>19 open the door; correct?</p> <p>20 A. If -- let me clarify.</p> <p>21 If he opened up the right door and all</p> <p>22 the cargo was intact, he noticed it was</p> <p>23 intact, he was able to open it all the way</p>
<p style="text-align: right;">Page 90</p> <p>1 close the doors back up again. But he said</p> <p>2 that there was nothing that was indicating</p> <p>3 to him that the articles of cargo were in</p> <p>4 any kind of state of disarray.</p> <p>5 Q. Okay. You just stated that if -- upon</p> <p>6 opening on the right side, it sounds like</p> <p>7 if he believed that there was a shift in</p> <p>8 the cargo, he should close the right door</p> <p>9 again. Is that -- did I understand that</p> <p>10 part correctly?</p> <p>11 A. So let me clarify.</p> <p>12 So if he opens up the right door,</p> <p>13 nothing comes out, he can make an</p> <p>14 observation that it seems to be safe or</p> <p>15 maybe a little bit of cargo -- articles of</p> <p>16 cargo movement. Then he looks to the</p> <p>17 left-hand side and let's just say</p> <p>18 hypothetically he noticed that the bales --</p> <p>19 the bales of insulation were pressed up</p> <p>20 against that door and then he went and</p> <p>21 opened it anyway. Problematic, sure. Of</p> <p>22 course it is. But that was not the case</p> <p>23 because he had already started getting the</p>	<p style="text-align: right;">Page 92</p> <p>1 up and chain it back to the side wall, then</p> <p>2 he looked inside and he saw that there was</p> <p>3 no articles of cargo pressed up against the</p> <p>4 door -- the barn door, then he can go ahead</p> <p>5 and open that door up.</p> <p>6 If he noticed that there's cargo all</p> <p>7 over the place in there, then, of course,</p> <p>8 he wouldn't -- he wouldn't open it up. And</p> <p>9 if it was pressing up against the door, he</p> <p>10 wouldn't open up that door either.</p> <p>11 But he stated in testimony -- and,</p> <p>12 again, I have no reason to believe</p> <p>13 otherwise other than -- you know, that he's</p> <p>14 given sworn testimony -- that the articles</p> <p>15 of cargo were -- they were -- they</p> <p>16 appeared -- I think he used the word</p> <p>17 "appeared" -- appeared to be in the same</p> <p>18 manner that the right-hand side was.</p> <p>19 Q. At the bottom of page 19, the last</p> <p>20 paragraph, if you'll go ahead and read that</p> <p>21 and then let me know when you're ready for</p> <p>22 the question.</p> <p>23 A. Okay.</p>

<p>Page 93</p> <p>1 Q. Okay. The second sentence in that last 2 paragraph at the bottom of page 19 of your 3 report states: It is not a policy of 4 Heartland nor is this action regulatory in 5 terms of FMCSR. 6 Are you simply stating that the Federal 7 Motor Carrier Safety Regulation does not 8 dictate a certain method for opening the 9 trailer doors? 10 <b>A. Okay. You jumped in the middle of this 11 paragraph again. That throws me off 12 whenever you do that, so if you'll read the 13 entirety of the paragraph. 14 It should be noted that Heartland's 15 guideline as listed above is just that. It 16 is [sic] a policy of Heartland nor is this 17 action regulatory in terms of the FMCSR. 18 Now, what's the question on that?</b> 19 Q. When you say that nor is this action 20 regulatory in terms of FMCSR, I just want 21 to make sure I understand what you're 22 saying. You're simply saying best 23 practices as to opening the trailer door</p>	<p>Page 95</p> <p>1 <b>door, the driver's side door, that he</b> 2 <b>noticed that there was articles of cargo</b> 3 <b>pressed up against the door but opened it</b> 4 <b>anyway. That wasn't the case.</b> 5 Q. Okay. Going on to the next page, so the 6 top of page 20. Do you want to read the 7 rest of what you had relating to this 8 opinion? 9 <b>A. Yes. Just the top paragraph or both?</b> 10 Q. Both. Since they relate to the same 11 opinion, both, please. 12 <b>A. Okay.</b> 13 Q. All right. The first paragraph at the top 14 of page 20 references Knauf performing a 15 basic and rudimentary procedure. What is 16 the basis for determining that it is a 17 basic and rudimentary procedure? 18 <b>A. Opening a door is basic. I mean, it's</b> 19 <b>basic. You know, it's not some complex</b> 20 <b>pulling a transmission from a commercial</b> 21 <b>motor vehicle. It's not, you know, dealing</b> 22 <b>with extremely high hazardous-type</b> 23 <b>materials for securement purposes. This is</b></p>
<p>Page 94</p> <p>1 does not necessarily come from the Federal 2 Motor Carrier Safety Regulation? 3 <b>A. Correct.</b> 4 Q. Thank you. 5 <b>A. I mean, there's publications out there</b> 6 <b>about that, but it's not a matter of --</b> 7 <b>it's not codified into law.</b> 8 Q. All right. The last sentence at the bottom 9 of page 19, you state: Additionally, it is 10 most probable that Ross' method of opening 11 the CMV semitrailer doors on the Heartland 12 CMV was not causative to the subject 13 incident. 14 How did you go about analyzing 15 causation of the incident? 16 <b>A. Additionally, it is most probable that</b> 17 <b>Ross' method of opening the CMV semitrailer</b> 18 <b>doors on the Heartland CMV was not</b> 19 <b>causative to the subject incident.</b> 20 <b>So, in other words, there was nothing</b> 21 <b>indicated to us in his deposition that</b> 22 <b>something that he did -- so, in other</b> 23 <b>words, when he opened that left-hand side</b></p>	<p>Page 96</p> <p>1 <b>just opening up a trailer door. So I think</b> 2 <b>it's pretty -- it's a pretty basic and</b> 3 <b>rudimentary procedure.</b> 4 Q. Okay. But I believe in this sentence you 5 are referring to what Knauf would have 6 done. 7 <b>A. Yeah. Yeah.</b> 8 Q. Okay. That second paragraph at the top of 9 page 20, you say that this would also be 10 relevant as to opinion 3 of Pinckney where 11 he indicates Ross would have observed the 12 lack of securement when looking behind the 13 closed CMV semitrailer doors to confirm the 14 articles of cargo had not shifted. 15 Do you see that? 16 <b>A. Yes.</b> 17 Q. Are you stating that Mr. Ross would not 18 have indicated the lack of -- strike that. 19 Are you trying to indicate Mr. Ross 20 would not have noticed the lack of straps? 21 <b>A. No. I'm stating what your expert,</b> 22 <b>Pinckney, stated.</b> 23 <b>So it says: This response is also</b></p>

<p>Page 97</p> <p>1 relevant to opinion number 3 of Pinckney</p> <p>2 where he indicates Ross would have observed</p> <p>3 the lack of securement when looking behind</p> <p>4 the closed CMV trailer doors to confirm the</p> <p>5 articles of cargo had not shifted.</p> <p>6 That's -- I'm just reciting what your</p> <p>7 expert is claiming.</p> <p>8 Q. Okay. Do you agree that with the right</p> <p>9 side of the trailer open, Mr. Ross would</p> <p>10 have been able to observe whether or not</p> <p>11 load straps were in use?</p> <p>12 A. Sure. Went over that before.</p> <p>13 Q. Okay. On page 20, you include some</p> <p>14 quotations from the testimonies of</p> <p>15 Mr. McGrew and Todd, and then on page 21</p> <p>16 you continue with some testimony from</p> <p>17 Mr. Bjerke. Is that correct?</p> <p>18 A. Yeah. I've been trying to pronounce that</p> <p>19 name correctly, but I just kind of drop the</p> <p>20 "J."</p> <p>21 Yes. All three of them, they -- pretty</p> <p>22 much their testimony was all consistent</p> <p>23 that Knauf knew about -- they had</p>	<p>Page 99</p> <p>1 A. Yes. But I'm talking about that they --</p> <p>2 they testified here: So we had requested</p> <p>3 that corporate reach out to them and</p> <p>4 request that.</p> <p>5 So that's what he's talking about,</p> <p>6 Knauf or Knauf. I'm not sure how to</p> <p>7 pronounce that.</p> <p>8 Q. Okay. And both Mr. McGrew and Mr. Todd</p> <p>9 also testified they did not know whether or</p> <p>10 not Cameron Ashley's corporate actually had</p> <p>11 done that; correct?</p> <p>12 A. I don't specifically -- it's a memory test.</p> <p>13 I mean, I don't specifically recall that</p> <p>14 exact line.</p> <p>15 Q. Okay. If that is their testimony, would</p> <p>16 that impact whether or not you believe</p> <p>17 Knauf had been put on notice?</p> <p>18 A. I would have to see the specific testimony</p> <p>19 before I --</p> <p>20 Q. Okay. So it may --</p> <p>21 A. I'll allow the testimony to speak for</p> <p>22 itself. I mean, I'm not going to -- just</p> <p>23 like I didn't with Mr. -- with Mr. Ross, I</p>
<p>Page 98</p> <p>1 conversations about this multiple times in</p> <p>2 memo form and so forth, but it just never</p> <p>3 rectified.</p> <p>4 So that's what I talk about -- and this</p> <p>5 is actually one of my opinions that I'm</p> <p>6 going to add on when we get to the end --</p> <p>7 and we can even talk about that right now</p> <p>8 because it's based on this -- that based on</p> <p>9 these three -- I think it was something</p> <p>10 like 24 different complaints -- comments or</p> <p>11 complaints regarding this very situation</p> <p>12 with articles of cargo cascading from</p> <p>13 trailers. That is a matter of Knauf having</p> <p>14 been put on notice by -- by outside</p> <p>15 parties, outside vendors or third-party</p> <p>16 administrators or whatever you want to call</p> <p>17 them, that this was a problem. It was a</p> <p>18 problematic issue.</p> <p>19 Q. Did you take into consideration the</p> <p>20 testimony of Mr. McGrew and Todd that they</p> <p>21 had not themselves had any discussion with</p> <p>22 Knauf as to any incidences of falling</p> <p>23 freight?</p>	<p>Page 100</p> <p>1 don't -- I don't -- I'm not going to</p> <p>2 challenge his testimony. It's not my job.</p> <p>3 So if they state that, you know, then they</p> <p>4 state it. The document says what it says.</p> <p>5 Q. Okay. At the bottom of page 21, why don't</p> <p>6 you read -- you do not -- I'm not going to</p> <p>7 ask about the quotation of testimony. Just</p> <p>8 your opinion. So if you will read that</p> <p>9 part and let me know when you're ready.</p> <p>10 A. You're saying at the bottom of page 21, the</p> <p>11 last paragraph?</p> <p>12 Q. Yes, sir.</p> <p>13 A. Okay.</p> <p>14 I forgot to put "modus" in there, modus</p> <p>15 operandi.</p> <p>16 So it now reads: As aforesaid, Knauf</p> <p>17 took the lackadaisical approach to</p> <p>18 responding to customer service comments</p> <p>19 regarding load securement, obviously a</p> <p>20 modus operandi of profit over safety. In</p> <p>21 his sworn deposition testimony, Weldon</p> <p>22 states that unless the customer service</p> <p>23 response specifically requests Knauf use</p>

<p>Page 101</p> <p>1 cargo securement devices, Weldon considers</p> <p>2 the customer comments as unjustified.</p> <p>3 And then it goes into testimony.</p> <p>4 Q. What evidence are you relying on as to</p> <p>5 Knauf's profit?</p> <p>6 A. Well, if you are not -- if you have</p> <p>7 hypothetically --</p> <p>8 And I'm just going to use -- I'm going</p> <p>9 to throw just a random number out there.</p> <p>10 -- ten trailers leaving your terminal,</p> <p>11 your facility, whatever it may be, your</p> <p>12 manufacturing facility, shipping</p> <p>13 operation -- if you've got ten trailers</p> <p>14 leaving your facility every day and there's</p> <p>15 a cost factor to the straps of \$20 per</p> <p>16 strap hypothetically, that's \$200 a day.</p> <p>17 That's a thousand dollars a week that --</p> <p>18 it's a motor -- excuse me -- shippers are</p> <p>19 saying we're not going to use them. And it</p> <p>20 in all likelihood, in all probability, is a</p> <p>21 profit-over-safety modus operandi.</p> <p>22 Q. All right. You have not reviewed any</p> <p>23 documents from Knauf relating to their</p>	<p>Page 103</p> <p>1 A. No. No. But I'll make sure that I have</p> <p>2 that for trial, but I'm just saying for</p> <p>3 deposition purposes -- you know, when it</p> <p>4 comes time for trial, I'll have an exact</p> <p>5 receipt because I'll go out and buy two</p> <p>6 straps.</p> <p>7 Q. Mr. Turner, if I could have you look at</p> <p>8 page 22 of your report.</p> <p>9 A. Sure.</p> <p>10 Q. And specifically I am drawing your</p> <p>11 attention to the paragraph roughly in the</p> <p>12 middle of the page that starts with it</p> <p>13 would be a sensical conclusion.</p> <p>14 A. Yes. Let me read that first, please.</p> <p>15 I'm going to read a little bit above</p> <p>16 that, too, because it's referencing above.</p> <p>17 Okay.</p> <p>18 Q. Okay. The last sentence in that paragraph,</p> <p>19 you state that Knauf's failure to utilize</p> <p>20 load-securement devices offered by Ross is</p> <p>21 a proximate cause to the subject incident.</p> <p>22 A. Yes.</p> <p>23 Q. Have you set forth a causation analysis in</p>
<p>Page 102</p> <p>1 profit or their costs specifically, though;</p> <p>2 correct?</p> <p>3 A. No, of course not. But I'm basing it on</p> <p>4 what I know that straps would cost.</p> <p>5 You know, they're north of 20. I'm</p> <p>6 just using a round figure. They're north</p> <p>7 of 20. So building that cost into the cost</p> <p>8 of a cargo load, that's reasonable. But</p> <p>9 I'm just basing it on the fact that if you</p> <p>10 hypothetically -- and, again,</p> <p>11 hypothetical -- had ten trailers a day</p> <p>12 leave your facility and you had to put \$20</p> <p>13 worth of straps at \$200 a day -- times five</p> <p>14 is a thousand dollars, times four is \$4,000</p> <p>15 a month.</p> <p>16 So I'm just saying that as a basis of</p> <p>17 understanding why -- why a shipper perhaps</p> <p>18 may option to not operate in a safe manner</p> <p>19 by making sure that their -- when they were</p> <p>20 put on notice by McGrew, Todd, and Bjerke</p> <p>21 that they didn't react according.</p> <p>22 Q. Okay. Do you provide anywhere in your</p> <p>23 report the cost of a load strap?</p>	<p>Page 104</p> <p>1 your report?</p> <p>2 A. No. We're not accident reconstructionists.</p> <p>3 Q. Okay.</p> <p>4 A. And that's based on testimony -- that</p> <p>5 opinion there or that paragraph is based on</p> <p>6 the testimony where above that he -- he</p> <p>7 testified, Mr. Ross -- is that and I had</p> <p>8 two load straps with me and I presented</p> <p>9 them to him and he told me that they</p> <p>10 already had some, that he didn't need them.</p> <p>11 THE WITNESS: I'm trying, Madam</p> <p>12 Court Reporter. I'm doing my</p> <p>13 best.</p> <p>14 Q. Okay. The paragraph right above where it</p> <p>15 says opinion number 4, so a little bit</p> <p>16 lower, still on page 22 of your report, the</p> <p>17 one that starts with it is the opinion of</p> <p>18 the undersigned. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. All right. If you'll read that sentence</p> <p>21 and then let me know when you're ready for</p> <p>22 the question.</p> <p>23 A. Okay.</p>

<p>Page 105</p> <p>1 Q. Okay. You identify an industry standard</p> <p>2 for customer service. What industry</p> <p>3 standard for customer service are you</p> <p>4 relying upon?</p> <p>5 <b>A. It is the opinion of the undersigned that</b></p> <p>6 <b>the industry standard for customer service</b></p> <p>7 <b>would be a safe work environment free from</b></p> <p>8 <b>falling articles of cargo and -- so what we</b></p> <p>9 <b>do is because 393.100 would not be</b></p> <p>10 <b>applicable to Knauf -- because in this case</b></p> <p>11 <b>here they are not a motor carrier. I don't</b></p> <p>12 <b>know if they have a motor carriage</b></p> <p>13 <b>operation, but in terms of this case here,</b></p> <p>14 <b>they are not a motor carrier, so I cannot</b></p> <p>15 <b>reasonably apply the regulations of the</b></p> <p>16 <b>FMCSR to a shipper.</b></p> <p>17 <b>However, I can take that and say</b></p> <p>18 <b>393.100 is a matter of regulation that can</b></p> <p>19 <b>be used as a standard of care or even at</b></p> <p>20 <b>best practice to make sure that the</b></p> <p>21 <b>articles of cargo are adequately secured.</b></p> <p>22 Q. Okay. I'd like you to drop down to the</p> <p>23 bottom of page 22 where you begin to</p>	<p>Page 107</p> <p>1 referencing?</p> <p>2 <b>A. That the articles -- there would be no</b></p> <p>3 <b>regulation -- let me put it this way: If</b></p> <p>4 <b>articles of cargo never cascaded, they</b></p> <p>5 <b>never fell off -- they never -- any of</b></p> <p>6 <b>those things -- they just remained on a</b></p> <p>7 <b>trailer. Everything you put on the back of</b></p> <p>8 <b>a trailer just remained on the trailer.</b></p> <p>9 <b>Then there's no reason for 392.9. There's</b></p> <p>10 <b>no reason for 393.100. There's no</b></p> <p>11 <b>necessity for essentially the FMCSR in</b></p> <p>12 <b>terms of securement of articles of cargo.</b></p> <p>13 <b>So that right there and to me in and of</b></p> <p>14 <b>itself is just -- there would be no need</b></p> <p>15 <b>for it. But due to the fact that we know</b></p> <p>16 <b>that articles of cargo will dislodge, will</b></p> <p>17 <b>shift due to relative motion of commercial</b></p> <p>18 <b>motor vehicles, the regulations do exist.</b></p> <p>19 <b>So when it says while the undersigned</b></p> <p>20 <b>agrees that there are no absolutes when it</b></p> <p>21 <b>comes to securing articles of cargo, there</b></p> <p>22 <b>is insurmountable evidence that the proper</b></p> <p>23 <b>application of load-securement devices</b></p>
<p>Page 106</p> <p>1 talk -- respond to opinion 4 of</p> <p>2 Mr. Pinckney.</p> <p>3 <b>A. Where it starts out it is most probable?</b></p> <p>4 Q. No. The paragraph before that. The first</p> <p>5 one under opinion 4.</p> <p>6 <b>A. Okay.</b></p> <p>7 Q. The one that starts with while the</p> <p>8 undersigned agrees.</p> <p>9 <b>A. I gotcha. Okay. I'll read that real</b></p> <p>10 <b>quick.</b></p> <p>11 <b>Okay.</b></p> <p>12 Q. Okay. The first sentence in that paragraph</p> <p>13 immediately under opinion number 4 on</p> <p>14 page 22 states that while the undersigned</p> <p>15 agrees that there is no absolutes when it</p> <p>16 comes to securing articles of cargo, there</p> <p>17 is insurmountable evidence that the proper</p> <p>18 application of load-securement devices</p> <p>19 extremely minimizes the risks of articles</p> <p>20 of cargo shifting and/or falling from the</p> <p>21 CMV.</p> <p>22 Within that sentence, what</p> <p>23 insurmountable evidence are you</p>	<p>Page 108</p> <p>1 <b>extremely minimizes risks of articles of</b></p> <p>2 <b>cargo shifting or falling from the CMV. I</b></p> <p>3 <b>mean, there would be no regulations if it</b></p> <p>4 <b>was not an issue, but there are regulations</b></p> <p>5 <b>because it is recognized by the FMCSA as --</b></p> <p>6 <b>and the FMCSRs as a problem.</b></p> <p>7 Q. The next sentence, looking at that same</p> <p>8 paragraph --</p> <p>9 <b>A. Yeah.</b></p> <p>10 Q. -- reads: The risk comparison between no</p> <p>11 load securement and adequate load</p> <p>12 securement easily shows the higher risk of</p> <p>13 pernicious incident such as the subject</p> <p>14 incident when there is no load securement</p> <p>15 in place of the CMV.</p> <p>16 Okay. Did you do a risk comparison</p> <p>17 yourself?</p> <p>18 <b>A. No. Based on -- not on this particular</b></p> <p>19 <b>case. But it is demonstrated and proven</b></p> <p>20 <b>that load securement fail -- load</b></p> <p>21 <b>securement -- failure to load secure is a</b></p> <p>22 <b>leading cause -- one of the leading causes</b></p> <p>23 <b>of commercial motor vehicle crashes.</b></p>

<p style="text-align: right;">Page 109</p> <p>1 For example, if you take an 18-wheeler</p> <p>2 CMV -- in this case here that's what we</p> <p>3 have, a five-axle -- and the driver is</p> <p>4 going around an interchange on an</p> <p>5 interstate highway and the articles of</p> <p>6 cargo in the back of the semitrailer are</p> <p>7 not adequately secured, you get a shift.</p> <p>8 And if the driver is making a right radius</p> <p>9 turn, you get that shift and the articles</p> <p>10 of cargo shift and fall to the left side of</p> <p>11 the semitrailer, it's over.</p> <p>12 I've handled many, many, many, many</p> <p>13 cases such as that. So that's based on</p> <p>14 experience as well as based on the</p> <p>15 regulations -- or excuse me -- the FMCSA</p> <p>16 making such statement in terms of that.</p> <p>17 Q. So you're not referencing to, for instance,</p> <p>18 a published study or a specific risk</p> <p>19 comparison when you're making this</p> <p>20 statement?</p> <p>21 A. No. Again, the FMCSA, which is the</p> <p>22 administration whom writes/authors the</p> <p>23 FMCSR with input from the industry, has a</p>	<p style="text-align: right;">Page 111</p> <p>1 highway is often either from operating too</p> <p>2 fast for conditions or it's because of</p> <p>3 articles of cargo shifting in a semitrailer</p> <p>4 during -- during that radius maneuver.</p> <p>5 Q. Okay. Are you aware of what statistical</p> <p>6 analysis method was used for this risk</p> <p>7 comparison that you're referencing?</p> <p>8 A. You would have to talk to the FMCSR about</p> <p>9 that because I don't know what the metrics</p> <p>10 were. I'm assuming that it's based on</p> <p>11 studies from -- I believe the third edition</p> <p>12 of the Large Truck Crash Causation Study</p> <p>13 addresses that as well.</p> <p>14 But in specifics are -- did we break it</p> <p>15 down and talk about, you know, this</p> <p>16 percentage is caused by this and has been</p> <p>17 determined by that, no. We just don't --</p> <p>18 we just don't -- there's no need to in this</p> <p>19 case here because, quite frankly, it's --</p> <p>20 it's an issue of the driver offering his</p> <p>21 straps and being rejected and said I have</p> <p>22 my own -- we have our own straps, we don't</p> <p>23 need yours, go to bed.</p>
<p style="text-align: right;">Page 110</p> <p>1 document that talks about -- it talks about</p> <p>2 that very issue, that load securements --</p> <p>3 and it's actually somewhere in the report.</p> <p>4 I don't remember exactly where.</p> <p>5 But it's somewhere in the report we</p> <p>6 talk about that specific issue of the</p> <p>7 Federal Motor Carrier Safety -- or excuse</p> <p>8 me -- the Federal Motor Carrier Safety</p> <p>9 Administration addresses that as a -- one</p> <p>10 of the leading causes of crashes is</p> <p>11 unsecured articles of cargo because -- and</p> <p>12 that includes flatbeds.</p> <p>13 I mean, if you take TMC, for example,</p> <p>14 which is a major flatbed carrier, and if</p> <p>15 they don't -- if they don't secure a</p> <p>16 flatbed and something comes off on a</p> <p>17 highway and bounces down a roadway and goes</p> <p>18 through the windshield of a car, that's the</p> <p>19 type of incidents that they're speaking of.</p> <p>20 So they're saying that they do cause</p> <p>21 pernicious crashes.</p> <p>22 Almost every rollover that you see that</p> <p>23 occurs on an interchange off an interstate</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. Do you know which specific load-securement</p> <p>2 device is being utilized in this risk</p> <p>3 comparison that is referenced on the bottom</p> <p>4 of page 22?</p> <p>5 A. It could be any number. It says -- where</p> <p>6 it says here it's most probable that had</p> <p>7 Knauf performed the basic rudimentary duty</p> <p>8 of wrapping the bundles of insulation and</p> <p>9 placing adequate securement devices at the</p> <p>10 rear of the semitruck -- now, that term</p> <p>11 "devices" is very broad, because it could</p> <p>12 be D-I-D bags, which are called DID bigs.</p> <p>13 It could be blocking and bracing by</p> <p>14 timbers, in other words, two-by-fours and</p> <p>15 so forth. It could be straps. It could be</p> <p>16 K-rail webbing. It could be -- I mean,</p> <p>17 there's a whole plethora of -- load bars.</p> <p>18 There's a whole plethora of various</p> <p>19 methodologies of articles -- securing</p> <p>20 articles of cargo.</p> <p>21 And some of them are directly addressed</p> <p>22 in 383.111 further into that subchapter --</p> <p>23 or into that chapter where they talk about</p>



<p style="text-align: right;">Page 113</p> <p>1 specifics, for example, you know, securing</p> <p>2 logs on the back of a trailer. And so they</p> <p>3 talk about some specifics.</p> <p>4 And, you know, I had a case years ago</p> <p>5 in Alabama where there were logs on the</p> <p>6 back of a trailer, and it was problematic.</p> <p>7 And so, you know, they talk about all</p> <p>8 different levels of load securement,</p> <p>9 nothing specifically. So it's just a</p> <p>10 general statement.</p> <p>11 Q. Okay. Are you rendering an opinion as to</p> <p>12 which specific load-securement method</p> <p>13 should have been utilized in this case?</p> <p>14 A. Well, load bars are -- load bars could have</p> <p>15 been used, but -- they could have asked the</p> <p>16 driver, you know, let us use your load</p> <p>17 bars, but they didn't. They could have</p> <p>18 taken Mr. Ross' straps and used them, but</p> <p>19 they didn't. They could have applied some</p> <p>20 timbers in the back, you know, but they</p> <p>21 didn't. There could have been any number.</p> <p>22 They could have used DID bags, which you</p> <p>23 put them inside and you blow them up with</p>	<p style="text-align: right;">Page 115</p> <p>1 thereof, but they just chose to do nothing.</p> <p>2 They just closed it up and said get on your</p> <p>3 way.</p> <p>4 Q. Okay. Understanding you have just listed</p> <p>5 different methods that could have been</p> <p>6 used, are you providing an opinion as to</p> <p>7 which one should have been used?</p> <p>8 A. No. I think they had straps -- you know,</p> <p>9 I'll give you an extra five minutes after</p> <p>10 five o'clock because I've got a dog that's</p> <p>11 got to go out. So if I can take five</p> <p>12 minutes to take care of that real quick and</p> <p>13 come right back, I'll give you an extra</p> <p>14 five at the end.</p> <p>15 Q. We can absolutely take a five-minute break.</p> <p>16 That's fine.</p> <p>17 A. Thank you.</p> <p>18 THE VIDEOGRAPHER: We are off the</p> <p>19 record. The time is 3:15 p.m.</p> <p>20 (A recess was taken.)</p> <p>21 THE VIDEOGRAPHER: We are back on</p> <p>22 the record. The time is</p> <p>23 3:20 p.m.</p>
<p style="text-align: right;">Page 114</p> <p>1 air and they put them up against the door</p> <p>2 and they keep all the articles of cargo in</p> <p>3 good shape during transit.</p> <p>4 So they didn't do that. They did</p> <p>5 nothing. They just basically closed the</p> <p>6 door up and, you know, represented that</p> <p>7 they had their straps, so they didn't need</p> <p>8 the driver's. And they closed the doors,</p> <p>9 and that was it, move on.</p> <p>10 Q. Okay. That was not responsive to my</p> <p>11 question.</p> <p>12 My question is, are you rendering an</p> <p>13 opinion as to which load-securement method</p> <p>14 should have been used in this case?</p> <p>15 A. Okay. Like I said, is that they could</p> <p>16 have -- yeah. I thought I answered that in</p> <p>17 the beginning. I said they could have used</p> <p>18 DID bags. They could have used straps.</p> <p>19 They could have used timbers. They could</p> <p>20 have used load bars. They could have used</p> <p>21 webbing. They could have used K-rail</p> <p>22 straps. They could have used a whole</p> <p>23 number of different things or a combination</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. (By Ms. Baugh:) Okay, Mr. Turner. I would</p> <p>2 like to direct your attention to page 23 of</p> <p>3 your report again. That might have been</p> <p>4 where we already were.</p> <p>5 A. Sure.</p> <p>6 Q. But specifically I would like to take you</p> <p>7 on page 23. It's within your opinion in</p> <p>8 response to Mr. Pinckney's fifth opinion.</p> <p>9 And I want to bring you down to this</p> <p>10 paragraph here that starts with -- well,</p> <p>11 really these last two paragraphs, the ones</p> <p>12 that start with motor carrier industry best</p> <p>13 practices and then the next one that says</p> <p>14 in some cases. So if you would read those</p> <p>15 two and let me know when you're ready for</p> <p>16 the questions.</p> <p>17 A. Sure.</p> <p>18 Okay.</p> <p>19 Q. Okay. I believe you've previously</p> <p>20 testified that the shipper is not held or</p> <p>21 subject to the Federal Motor Carrier Safety</p> <p>22 Regulations. Is that accurate?</p> <p>23 A. The shipper is not. That's correct.</p>

<p style="text-align: right;">Page 117</p> <p>1 Q. All right. But the motor carrier and the 2 driver is; correct?</p> <p>3 <b>A. The motor carrier and the driver, yes, and 4 a broker in many different cases; but motor 5 carrier and driver, correct.</b></p> <p>6 Q. Okay. So in this second paragraph that 7 I've directed you to here, the last 8 sentence of it states that, specifically, 9 while the motor carrier and professional 10 CMV driver are subject to the FMCSR, the 11 shipper shares the burden of adequate load 12 securement in a sealed CMV. 13 Do you see that sentence?</p> <p>14 <b>A. You jumped in the middle of a paragraph 15 again, I think.</b></p> <p>16 Q. It is the last sentence of the two 17 paragraphs I asked you to look at.</p> <p>18 <b>A. Okay. All right. Let me find out where 19 you picked up from.</b></p> <p>20 <b>Okay. I see where you were.</b> 21 <b>Okay.</b></p> <p>22 Q. Okay. What creates the basis for a shipper 23 sharing the burden of adequate load</p>	<p style="text-align: right;">Page 119</p> <p>1 <b>the responsibility of securement of the 2 articles of cargo.</b></p> <p>3 <b>So is it a common-law issue?</b></p> <p>4 <b>Perhaps. I don't know. I'm not an 5 attorney.</b></p> <p>6 <b>But is it a regulatory matter?</b></p> <p>7 <b>Well, using best practices -- you can 8 go to J.J. Keller and look at that, and 9 they'll talk about best practices of 10 securing articles of cargo. And if a 11 shipper assumes that responsibility -- 12 assumes that responsibility by saying we 13 have our own straps, Mr. Ross, thank you 14 very much, take them back to your cab, go 15 to bed, we'll wake you up when we're done, 16 they assumed the responsibility.</b></p> <p>17 Q. When you reference J.J. Keller right now 18 for looking at best practices, what exactly 19 are you referencing there?</p> <p>20 <b>A. Oh, I don't know. I'm just going off the 21 top of my mind, seeing many of their 22 documents over the many years.</b></p> <p>23 Q. Okay. When in your report on page 23 --</p>
<p style="text-align: right;">Page 118</p> <p>1 securement in a sealed CMV if it is not the 2 Federal Motor Carrier Safety Regulation?</p> <p>3 <b>A. It's the offer of straps and being 4 rejected. So you offer a load-securement 5 device as a professional loader of articles 6 of cargo, and then you reject it and say we 7 have our own. In my -- and the way that 8 I'm looking at this is that that right 9 there is -- the shipper assumed the duty at 10 that point. And that's the best way to put 11 it.</b></p> <p>12 <b>Now, is there a specific regulation 13 that speaks to that and says that they 14 assumed it, no. It's testimony of 15 Mr. Ross, his sworn testimony.</b></p> <p>16 <b>And then you look back on the history 17 of the amount of times that articles of 18 cargo have fallen off of Knauf loads is -- 19 it just compounds -- again, it's taking all 20 of the universe of information in 21 discovery, throwing it into a pot, mixing 22 it up, and coming out with a report.</b> 23 <b>That's what we have here. They accepted</b></p>	<p style="text-align: right;">Page 120</p> <p>1 when you say there that the shipper shares 2 the burden of the adequate load securement, 3 what -- how is that burden allocated 4 between the motor carrier driver and 5 shipper?</p> <p>6 <b>A. Okay. Where it says specifically -- let's 7 read the whole paragraph.</b></p> <p>8 <b>In some cases, such as when the CMV 9 semitrailer is sealed, shippers' actions 10 are specifically mentioned in the FMCSR and 11 their interpretations. Specifically, while 12 the motor carrier and professional CMV 13 driver are subject to the FMCSR, the 14 shipper shares the burden of adequate load 15 securement in a sealed CMV.</b></p> <p>16 <b>I look -- and that's a general -- 17 that's a general statement to pose 18 specifically to this case. So a motor -- 19 so, in other words, we're not specifically 20 referencing -- we're looking at 392.9, and 21 that's what we're addressing here. We're 22 not specifically saying Knauf here.</b> 23 <b>What we're saying is that a shipper,</b></p>



<p style="text-align: right;">Page 121</p> <p>1 when they assume the responsibility of</p> <p>2 securing articles of cargo by being offered</p> <p>3 straps and rejecting those straps and the</p> <p>4 driver can't watch a live load, they're</p> <p>5 assuming that responsibility. So the</p> <p>6 statement of a shared responsibility is</p> <p>7 going to depend upon the circumstances of</p> <p>8 the issue.</p> <p>9 Now, in this particular case here, I</p> <p>10 look at it 100 percent on Knauf. And the</p> <p>11 reason I look at it 100 percent on Knauf</p> <p>12 and there's no responsibility, because</p> <p>13 Mr. Ross made the effort of coming out of</p> <p>14 his truck tractor and saying here's my</p> <p>15 straps, and they say, no, thank you, we</p> <p>16 have our own, we use our own, go away.</p> <p>17 That's -- that's what that paragraph is</p> <p>18 referring to.</p> <p>19 Q. Okay. So your opinion in this case is that</p> <p>20 Knauf held all the responsibility and</p> <p>21 Mr. Ross and Heartland had none?</p> <p>22 A. My opinion, yes, absolutely. Because</p> <p>23 Mr. Knauf -- excuse me. Not Mr. Knauf.</p>	<p style="text-align: right;">Page 123</p> <p>1 Q. Okay. Now I'd like to move to -- it goes</p> <p>2 to the bottom of page 24 of your report and</p> <p>3 continues onto page 25. It is -- in this</p> <p>4 section you are -- section 7 of your</p> <p>5 report, you're setting forth your opinions;</p> <p>6 correct?</p> <p>7 A. Yes. They're what we call -- we call them</p> <p>8 overarching opinions, but this -- all --</p> <p>9 everything else written in this report</p> <p>10 prior to this is also part of the opinions</p> <p>11 as well. So it's not exclusively these</p> <p>12 20-whatever opinions that we came -- that</p> <p>13 we wrote up here, 20 opinions.</p> <p>14 Q. And -- I apologize.</p> <p>15 And the factual bases and analysis for</p> <p>16 these opinions that you list out starting</p> <p>17 at the bottom of page 24 should be found in</p> <p>18 your report. Is that correct?</p> <p>19 A. Yes. Well, it's found in the report, yes,</p> <p>20 and -- you know, either directly or</p> <p>21 indirectly, but it's all found in the</p> <p>22 report.</p> <p>23 For example, I'm adding on another</p>
<p style="text-align: right;">Page 122</p> <p>1 Mr. Ross got out of his commercial motor</p> <p>2 vehicle at some point, maybe met the loader</p> <p>3 on the side of the trailer or at the window</p> <p>4 where they get their bill of lading,</p> <p>5 whatever the case may have been. He was --</p> <p>6 he offered his straps. He was rejected on</p> <p>7 his straps. And when he was rejected on</p> <p>8 his straps, he was told you can't watch</p> <p>9 this load, go to bed -- go back to your</p> <p>10 truck. That's what I mean by that. Go to</p> <p>11 your sleeper, whatever.</p> <p>12 So Mr. Ross made the effort, was</p> <p>13 rejected on the effort. So he made the</p> <p>14 reasonable assumption that the articles of</p> <p>15 cargo were adequately secured in order for</p> <p>16 him to be able to take that load of</p> <p>17 articles of cargo out into commerce -- in</p> <p>18 interstate commerce.</p> <p>19 Q. Is there a place in your report where you</p> <p>20 state that Knauf holds all of the liability</p> <p>21 for load securement and Heartland and</p> <p>22 Mr. Ross hold none?</p> <p>23 A. No. I just said it now.</p>	<p style="text-align: right;">Page 124</p> <p>1 opinion here, as I stated earlier, based on</p> <p>2 the -- page 20 where Todd, McGrew, and</p> <p>3 Bjerke -- they gave testimony that articles</p> <p>4 of cargo -- it's a systemic problem.</p> <p>5 They're constantly cascading out of the</p> <p>6 semitrailers that are loaded by Knauf --</p> <p>7 not constantly. I don't want to use -- not</p> <p>8 constantly, but often. Alls it takes is</p> <p>9 one time.</p> <p>10 So when you look at that, that's an</p> <p>11 additional opinion --</p> <p>12 Now, I don't know where we would place</p> <p>13 it in there, but somewhere in here and just</p> <p>14 call it 21.</p> <p>15 -- that Knauf was put on notice based</p> <p>16 on the testimony of those three</p> <p>17 individuals. They knew of it, but they</p> <p>18 just simply refused to do anything about</p> <p>19 it.</p> <p>20 Q. Okay. So opinion 2 that you have that</p> <p>21 starts at the bottom of page 24 and</p> <p>22 continues onto page 25, if you will,</p> <p>23 please, read that and let me know when you</p>

<p>Page 125</p> <p>1 are ready for the question.</p> <p>2 <b>A. Opinion 2. You don't want to discuss</b></p> <p>3 <b>opinion 1 and start at the top? Because</b></p> <p>4 <b>that's a pretty important opinion.</b></p> <p>5 Q. My question is relating to opinion 2, yes.</p> <p>6 <b>A. Fair enough. Okay.</b></p> <p>7 <b>It is the undersigned's opinion that</b></p> <p>8 <b>Knauf performed the basic and rudimentary,</b></p> <p>9 <b>yet vitally important, safety function of</b></p> <p>10 <b>applying adequate means of securement, the</b></p> <p>11 <b>cargo straps Ross offered to the Knauf</b></p> <p>12 <b>employee at a minimum, for the articles of</b></p> <p>13 <b>cargo loaded upon Ross' Heartland CMV</b></p> <p>14 <b>semitrailer ensuring the articles of cargo</b></p> <p>15 <b>within Ross' CMV were secure from shifting</b></p> <p>16 <b>and/or falling from the CMV semitrailer the</b></p> <p>17 <b>subject incident would not have occurred.</b></p> <p>18 Q. Okay. Is it your opinion that the use of a</p> <p>19 load strap on the load that Mr. Ross</p> <p>20 delivered to Cameron Ashley would have</p> <p>21 prevented cargo -- any cargo from falling</p> <p>22 out of the back of the truck?</p> <p>23 <b>A. It's to a high degree of probability that</b></p>	<p>Page 127</p> <p>1 <b>failures or what's referred to as relative</b></p> <p>2 <b>motion while transporting the articles of</b></p> <p>3 <b>cargo.</b></p> <p>4 <b>Excuse me.</b></p> <p>5 <b>There's a high degree of probability</b></p> <p>6 <b>that it does not occur.</b></p> <p>7 Q. Okay. And in that you just referenced the</p> <p>8 appropriate cargo securement. And so in</p> <p>9 this case for the cargo that we're talking</p> <p>10 about here today with Mr. Ross, for you,</p> <p>11 you believe a load strap would have been an</p> <p>12 adequate or appropriate means of load</p> <p>13 securement?</p> <p>14 <b>A. I think it's a reasonable means, yes. I</b></p> <p>15 <b>think it's a reasonable means by -- yeah,</b></p> <p>16 <b>absolutely.</b></p> <p>17 Q. Okay. I'd like to go to --</p> <p>18 <b>A. But, then again, what I want to also say is</b></p> <p>19 <b>that -- the appropriate type straps.</b></p> <p>20 <b>Now, I would well imagine based on the</b></p> <p>21 <b>motor carrier's history that they have</b></p> <p>22 <b>offered the appropriate type straps.</b></p> <p>23 <b>Whatever the loader alleges to have had and</b></p>
<p>Page 126</p> <p>1 <b>that's the case. Because other than that,</b></p> <p>2 <b>the FMCSR wouldn't even bother writing</b></p> <p>3 <b>393.100 or 392.7 of the regulations. So,</b></p> <p>4 <b>yeah, I -- absolutely.</b></p> <p>5 Q. Well, my question -- and I just want to</p> <p>6 make sure that what I was asking is what</p> <p>7 you're answering.</p> <p>8 My question, though, relates</p> <p>9 specifically to the use of a cargo load</p> <p>10 strap; okay? So just strap. Is this</p> <p>11 opinion stating that if a cargo load strap</p> <p>12 had been used on the load that Mr. Ross</p> <p>13 delivered the freight would not have fallen</p> <p>14 out of the back of the truck?</p> <p>15 <b>A. And I said to a high degree of probability.</b></p> <p>16 Q. Okay. Thank you.</p> <p>17 <b>A. You're welcome.</b></p> <p>18 <b>There's no absolutes. I mean,</b></p> <p>19 <b>there's -- you know, there's just no</b></p> <p>20 <b>absolutes. But when cargo securement is</b></p> <p>21 <b>utilized on a commercial motor vehicle and</b></p> <p>22 <b>it's the appropriate type cargo securement,</b></p> <p>23 <b>it reduces the risk of cargo securement</b></p>	<p>Page 128</p> <p>1 <b>was going to apply, that's -- I don't know</b></p> <p>2 <b>what the -- because you can't have fraying</b></p> <p>3 <b>on the straps and things like that. They</b></p> <p>4 <b>have to be well intact.</b></p> <p>5 Q. What about the straps that Mr. Ross says he</p> <p>6 offered? Have you --</p> <p>7 <b>A. That's what I'm saying. That's exactly</b></p> <p>8 <b>what I'm talking about. They're a motor</b></p> <p>9 <b>carrier, and a motor carrier, especially a</b></p> <p>10 <b>motor carrier like this that has a</b></p> <p>11 <b>demonstration of a substantial safety</b></p> <p>12 <b>record, my mind would say that they -- they</b></p> <p>13 <b>had the proper straps.</b></p> <p>14 <b>I doubt that they just went to Home</b></p> <p>15 <b>Depot and picked up some little tiny</b></p> <p>16 <b>ratchets that just don't do any good at</b></p> <p>17 <b>all. They probably had an effective</b></p> <p>18 <b>means -- see, it's called working load</b></p> <p>19 <b>limit, that the straps had to have some</b></p> <p>20 <b>degree of working load limit for that type</b></p> <p>21 <b>of -- that type of articles of cargo</b></p> <p>22 <b>shipment.</b></p> <p>23 Q. Do you know the working load limit of the</p>

<p>Page 129</p> <p>1 straps that Mr. Ross says he offered to</p> <p>2 Knauf?</p> <p>3 <b>A. Never saw them. Never examined them. I'm</b></p> <p>4 <b>just -- I'm stating it based on the fact of</b></p> <p>5 <b>the motor carrier's record of safety.</b></p> <p>6 <b>Their record of safety was exceptional.</b></p> <p>7 <b>So I would doubt that they went out to,</b></p> <p>8 <b>you know, some ship -- some DIY place and</b></p> <p>9 <b>just bought a box of straps and just --</b></p> <p>10 <b>substandard and didn't spend \$20 but just</b></p> <p>11 <b>spent \$5 and said, here, throw those on</b></p> <p>12 <b>cargo. No. I find that hard to believe,</b></p> <p>13 <b>but I can't prove it one way or the other.</b></p> <p>14 <b>But, nonetheless, they weren't used anyway.</b></p> <p>15 <b>He was told to take them and put them back.</b></p> <p>16 <b>So it really is an irrelevant issue.</b></p> <p>17 <b>Q. Well, but your opinion was that if they</b></p> <p>18 <b>used the load straps that Mr. Ross offered</b></p> <p>19 <b>the incident would not occur.</b></p> <p>20 <b>A. I don't know what type straps they had, but</b></p> <p>21 <b>you're also talking about articles of cargo</b></p> <p>22 <b>that are not extremely heavy.</b></p> <p>23 <b>MS. DYE: Object to the form.</b></p>	<p>Page 131</p> <p>1 <b>to part 393.100 and specifically start</b></p> <p>2 <b>looking at straps to make that</b></p> <p>3 <b>determination. Then you have to look at</b></p> <p>4 <b>the strap itself to make a determination if</b></p> <p>5 <b>it meets that working load limit</b></p> <p>6 <b>requirement.</b></p> <p>7 <b>But in general, as I stated, I -- I</b></p> <p>8 <b>would find it -- I'm hard-pressed to</b></p> <p>9 <b>believe that the motor carrier with such an</b></p> <p>10 <b>outstanding reputation would have just</b></p> <p>11 <b>taken and thrown any box of straps to the</b></p> <p>12 <b>driver and said, here, use these. Can</b></p> <p>13 <b>I prove that, no.</b></p> <p>14 <b>Q. Okay. And you have not undertaken the</b></p> <p>15 <b>analysis to determine the appropriate</b></p> <p>16 <b>working load limit for straps in this</b></p> <p>17 <b>instance?</b></p> <p>18 <b>A. Straps were not offered as evidence or in</b></p> <p>19 <b>discovery insofar as I know.</b></p> <p>20 <b>Q. That wasn't my question.</b></p> <p>21 <b>A. Yes, ma'am.</b></p> <p>22 <b>Q. My question is -- no. My question is</b></p> <p>23 <b>whether you have undertaken an analysis to</b></p>
<p>Page 130</p> <p>1 <b>A. So you're not talking about 55-gallon drums</b></p> <p>2 <b>filled with liquid that are 600 pounds</b></p> <p>3 <b>apiece. We're talking -- or hazardous</b></p> <p>4 <b>material. We're talking about essentially</b></p> <p>5 <b>big, giant, large pillows, bales, if you</b></p> <p>6 <b>will, of insulation. So it's not extreme,</b></p> <p>7 <b>extreme weight.</b></p> <p>8 <b>So I believe that the straps that they</b></p> <p>9 <b>would have had on there, it would make --</b></p> <p>10 <b>do I -- do I have them in front of me to</b></p> <p>11 <b>look at them? Did I ever have them in</b></p> <p>12 <b>front of me to look at? Was there any</b></p> <p>13 <b>information specifically on them?</b></p> <p>14 <b>Not insofar as I recall. So I can only</b></p> <p>15 <b>say that straps -- straps would have been</b></p> <p>16 <b>helpful for sure.</b></p> <p>17 <b>Q. What working load limit would be necessary</b></p> <p>18 <b>on straps for the load that is at issue in</b></p> <p>19 <b>this case?</b></p> <p>20 <b>A. You have to go to three-ninety -- you have</b></p> <p>21 <b>to know exactly what the weight is. You</b></p> <p>22 <b>have to know what the -- what the weight of</b></p> <p>23 <b>the articles of cargo is. You have to go</b></p>	<p>Page 132</p> <p>1 determine what the working load limit would</p> <p>2 be for the straps in this case.</p> <p>3 <b>A. Again, I -- the straps were not offered</b></p> <p>4 <b>into evidence, so I don't have the ability</b></p> <p>5 <b>to -- nor is there -- there's other</b></p> <p>6 <b>factors -- do I have the ability to sit</b></p> <p>7 <b>here and offer it into evidence as</b></p> <p>8 <b>discovery for me to examine the straps and</b></p> <p>9 <b>see if they meet the requirements for the</b></p> <p>10 <b>working load limit of the type of cargo.</b></p> <p>11 <b>Did I work that up, no, because there's</b></p> <p>12 <b>no point in working it up if I don't know</b></p> <p>13 <b>what the straps are.</b></p> <p>14 <b>Q. Okay. Do you know --</b></p> <p>15 <b>A. Irrespective of that, that was not the</b></p> <p>16 <b>seminal issue here. What it was, is that</b></p> <p>17 <b>the straps that you're referring to were</b></p> <p>18 <b>rejected by Knauf. And they were, you</b></p> <p>19 <b>know, apparently going to be using their</b></p> <p>20 <b>own straps, and they never did.</b></p> <p>21 <b>Q. Do you know where Mr. Ross got the straps</b></p> <p>22 <b>that he contends he offered to Knauf?</b></p> <p>23 <b>A. No, ma'am, I do not.</b></p>

<p>Page 133</p> <p>1 Q. Okay. So you do not know whether Heartland 2 provided those straps to him?</p> <p>3 <b>A. Of course I don't know.</b></p> <p>4 Q. All right. Thank you.</p> <p>5 <b>A. You're welcome.</b></p> <p>6 Q. All right. I'd like to look -- we are 7 still on page 25 of your report. I'd like 8 to ask you about opinion 7. So if you'll 9 read that one and let me know when you're 10 ready for the question.</p> <p>11 <b>A. Sure.</b></p> <p>12 <b>Okay. Sorry. I just wanted to read it</b> 13 <b>a second time. Go ahead.</b></p> <p>14 Q. Okay. Your opinion 7, are you stating that 15 regardless of what Mr. Ross did, it was the 16 absence of load-securement device that 17 caused the accident?</p> <p>18 <b>A. It was the absence of load-securement</b> 19 <b>devices that caused the accident. That's</b> 20 <b>correct.</b></p> <p>21 Q. Okay. And so in your opinion, 22 modifications or changes to Mr. Ross' 23 behavior would not have stopped the</p>	<p>Page 135</p> <p>1 have occurred.</p> <p>2 So are you saying in this opinion that 3 the actions of Mr. Ross, what he did or did 4 not do in opening the trailer door, do not 5 have an impact on whether or not the cargo 6 fell and he got hurt?</p> <p>7 <b>A. No. It's --</b></p> <p>8 MS. DYE: Same objection.</p> <p>9 <b>A. I mean, it says what it says. I mean, I'm</b> 10 <b>not really quite sure -- so it's the</b> 11 <b>undersigned's opinion that regardless of</b> 12 <b>the scenario of which professional CMV</b> 13 <b>driver Ross' injuries factually derived</b> 14 <b>from, had Knauf complied with the industry</b> 15 <b>best practices -- so what that's saying is</b> 16 <b>that no matter how he opened up the back --</b> 17 <b>the barn doors of that semitrailer -- no</b> 18 <b>matter how he opened them up, had the -- if</b> 19 <b>he went against the policy and he just</b> 20 <b>opened them up, as you referred to a term</b> 21 <b>earlier, willy-nilly --</b></p> <p>22 <b>I think that's the first time I've ever</b> 23 <b>used that.</b></p>
<p>Page 134</p> <p>1 incident?</p> <p>2 <b>A. One more time, please.</b></p> <p>3 Q. Okay. Do you believe that Mr. Ross, his 4 actions at Cameron Ashley, had or could 5 have had any impact on whether or not the 6 incident occurred?</p> <p>7 MS. DYE: Object to the form.</p> <p>8 <b>A. Based on -- based on discovery, I don't see</b> 9 <b>anything that would point in that direction</b> 10 <b>other than that we would have given a</b> 11 <b>suggestion as to it, you know, there being</b> 12 <b>a degree of responsibility by Ross. But we</b> 13 <b>didn't find that to be evidence that would</b> 14 <b>be -- that would substantiate that.</b></p> <p>15 Q. Well, so I'm trying to, then, understand 16 because your opinion 7 says that it's the 17 undersigned's opinion that regardless of 18 the scenario of which professional CMV 19 driver Ross' injuries factually derived 20 from, had Knauf complied with the industry 21 best practices by adequately securing the 22 articles of cargo within the Heartland CMV 23 semitrailer, the subject incident would not</p>	<p>Page 136</p> <p>1 -- that if he just arbitrarily opened 2 the doors and the articles of cargo were 3 secured in there, this incident doesn't 4 occur. That's what that means.</p> <p>5 Q. I believe earlier in this testimony I asked 6 you whether or not you had done a causation 7 analysis as to one aspect of your opinion. 8 Did you perform a causation analysis as to 9 any part of your opinions?</p> <p>10 <b>A. Other than -- other than the fact that it</b> 11 <b>was not -- the articles of cargo were not</b> 12 <b>secured by a loader that stated that he</b> 13 <b>didn't need those straps, you know, keep</b> 14 <b>them, I don't need them, I have my own, not</b> 15 <b>really, no. There's not a lot of basis for</b> 16 <b>us to go from.</b></p> <p>17 <b>And then looking at the history. I</b> 18 <b>look at the history of the motor carrier.</b> 19 <b>I look at the history of Knauf. We have an</b> 20 <b>exceptional motor carrier that trains their</b> 21 <b>drivers. Then we have a shipper where you</b> 22 <b>have -- a shipper -- Mr. Weldon, who's this</b> 23 <b>manager of the dock, that says they don't</b></p>

<p style="text-align: right;">Page 137</p> <p>1 put straps on anything. Well, that's</p> <p>2 pretty evident because every time -- not</p> <p>3 every time, but often when these articles</p> <p>4 of cargo reach their destination, you know,</p> <p>5 a driver has got to be aware because you</p> <p>6 can expect that there's a pretty reasonable</p> <p>7 chance that articles of cargo are going to</p> <p>8 come toppling down on top of you.</p> <p>9 Q. If a motor carrier generally trains as to</p> <p>10 safety, does it mean that it has trained</p> <p>11 every driver conclusively as to safety?</p> <p>12 A. Highly improbable. Because why are they</p> <p>13 going to train -- they have 1800 drivers --</p> <p>14 1700 drivers. They've got 1800 trucks</p> <p>15 roughly according to SMS -- SMS, that is.</p> <p>16 According to SMS, they have about 1700</p> <p>17 drivers and 1800 trucks. I doubt that they</p> <p>18 trained 1,699 drivers and they left</p> <p>19 Mr. Ross off the ticket.</p> <p>20 It's a carrier -- a motor carrier that</p> <p>21 has an exceptional safety record, and</p> <p>22 because they have an exceptional safety</p> <p>23 record, that leads us to believe that it's</p>	<p style="text-align: right;">Page 139</p> <p>1 A. Okay.</p> <p>2 Q. You're ready for the questions?</p> <p>3 A. Let me read it real quick, please. Thank</p> <p>4 you.</p> <p>5 Okay. One thing I did --</p> <p>6 Q. Okay.</p> <p>7 A. -- I wanted to substitute on here, too, is</p> <p>8 to strike the words "standards of care" and</p> <p>9 put "best practices" in place of that.</p> <p>10 Q. The first sentence of your opinion 15</p> <p>11 states: It's the undersigned's opinion</p> <p>12 that the shipper, Knauf, relied upon</p> <p>13 assumptions.</p> <p>14 Where in your report do you list out</p> <p>15 the assumptions that you believe Knauf</p> <p>16 made?</p> <p>17 A. Well, Mr. Weldon clearly makes assumptions</p> <p>18 because he makes an assumption that</p> <p>19 articles of cargo are going to go from</p> <p>20 point A to point B without cascading out of</p> <p>21 the back of a semitrailer once they get to</p> <p>22 the point of destination. So that's an</p> <p>23 assumption, and it's a very, very bad and</p>
<p style="text-align: right;">Page 138</p> <p>1 a motor carrier that would make sure that</p> <p>2 all their drivers are effectively trained.</p> <p>3 Q. Okay. So you are extrapolating that off of</p> <p>4 their safety data as opposed to looking at</p> <p>5 records of what Mr. Ross actually was</p> <p>6 trained on?</p> <p>7 A. That's the way the Motor Carrier --</p> <p>8 MS. DYE: Object to the form.</p> <p>9 A. That's the way the Federal Motor Carrier</p> <p>10 Safety Administration looks at it, too,</p> <p>11 when they do a compliance audit. They look</p> <p>12 directly at this SMS data. And they have</p> <p>13 deeper data as well.</p> <p>14 Q. Have you looked at any evidence suggesting</p> <p>15 that Heartland did in fact train Mr. Ross</p> <p>16 as to safety in opening trailer doors?</p> <p>17 A. I think I addressed that in the beginning</p> <p>18 of the deposition. There's none insofar as</p> <p>19 I know, but not to say that it doesn't</p> <p>20 exist.</p> <p>21 Q. All right. Looking on page 26 of your</p> <p>22 report, I would like you to look at</p> <p>23 opinion 15.</p>	<p style="text-align: right;">Page 140</p> <p>1 dangerous assumption. So that assumption</p> <p>2 should -- should not have been taken place</p> <p>3 by the shipper. That's the assumption.</p> <p>4 Then the assumption from the loader.</p> <p>5 The loader -- whether he was lazy -- I</p> <p>6 don't know. I just don't know the answer</p> <p>7 to that question, whether he was lazy or</p> <p>8 just didn't care. But he just loaded it</p> <p>9 up -- loaded up the trailer with these --</p> <p>10 with these bales of insulation, these</p> <p>11 articles of cargo -- loaded up the trailer</p> <p>12 and closed the doors and sealed it.</p> <p>13 So I look at that and say that's an</p> <p>14 assumption that those articles of cargo are</p> <p>15 going to go from point A to -- I think it's</p> <p>16 Codelli, Georgia, and be off-loaded there</p> <p>17 or make it there safely. That's an</p> <p>18 assumption. And assumptions are not a</p> <p>19 substitute for good, sound safety</p> <p>20 practices.</p> <p>21 Q. All right. I'd like to direct your</p> <p>22 attention to the top of page 27,</p> <p>23 specifically your opinion 19. If you can</p>


<p>Page 141</p> <p>1 read that one, please.</p> <p>2 <b>A. Okay.</b></p> <p>3 <b>Yes. Okay.</b></p> <p>4 Q. Okay. So opinion 19 states that it's the</p> <p>5 undersigned's opinion that the incident,</p> <p>6 while being an unfortunate event, the motor</p> <p>7 carrier, Heartland, and therefore</p> <p>8 professional CMV driver Ross, demonstrated</p> <p>9 as to being a motor carrier and a CMV</p> <p>10 driver that complied to the best of their</p> <p>11 ability in terms of the FMCSR.</p> <p>12 That is your opinion that you have</p> <p>13 stated there?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Okay. To what level does a motor carrier</p> <p>16 need to comply with the Federal Motor</p> <p>17 Carrier Safety Regulation?</p> <p>18 <b>A. Well, first off, the fact that they had</b></p> <p>19 <b>a -- that they had a policy about opening</b></p> <p>20 <b>cargo -- semitrailer cargo doors, number</b></p> <p>21 <b>one. That's the motor carrier.</b></p> <p>22 <b>Number two is that Mr. -- once again,</b></p> <p>23 <b>Mr. Ross offered straps knowing that his</b></p>	<p>Page 143</p> <p>1 <b>obviously love their jobs where they work</b></p> <p>2 <b>because they're training them to be safe.</b></p> <p>3 <b>And that's clear. That's clear to me, so,</b></p> <p>4 <b>yeah.</b></p> <p>5 Q. Okay. And if a motor carrier is found to</p> <p>6 not be compliant with the Federal Motor</p> <p>7 Carrier Safety Regulation, do they receive</p> <p>8 some sort of citation?</p> <p>9 <b>A. They could. Depends on -- depends on the</b></p> <p>10 <b>violation. Depends on the MCSAP --</b></p> <p>11 <b>THE WITNESS: And MCSAP, ma'am, is</b></p> <p>12 <b>M-C-S-A-P.</b></p> <p>13 <b>A. Depends on the MCSAP CVI enforcement</b></p> <p>14 <b>officer. I mean, he can write a violation.</b></p> <p>15 <b>He could choose to write the violation</b></p> <p>16 <b>against the motor carrier. He could choose</b></p> <p>17 <b>to write the violation against the driver</b></p> <p>18 <b>depending upon the violation itself.</b></p> <p>19 <b>So it's -- there is -- there are times</b></p> <p>20 <b>that Heartland -- even Heartland -- I mean,</b></p> <p>21 <b>you look at the SMS. They have violations.</b></p> <p>22 <b>But if you have that many trucks on the</b></p> <p>23 <b>road, I will guarantee you, you're going to</b></p>
<p>Page 142</p> <p>1 <b>articles of cargo by regulation must be</b></p> <p>2 <b>secured. So he was not given opportunity</b></p> <p>3 <b>to watch the live load, and he was -- he</b></p> <p>4 <b>just essentially had to take their word for</b></p> <p>5 <b>it by saying that I have my own strap -- we</b></p> <p>6 <b>have our own straps, we don't need yours.</b></p> <p>7 <b>That's an assumption, an assumption that's</b></p> <p>8 <b>a bad safety practice going back to the</b></p> <p>9 <b>prior question.</b></p> <p>10 Q. Does a motor carrier need to comply with</p> <p>11 the Federal Motor Carrier Safety</p> <p>12 Regulation, or is it okay for them to just</p> <p>13 do the best they can?</p> <p>14 <b>A. No. They -- I can tell you right now that</b></p> <p>15 <b>there's not a motor carrier on the road</b></p> <p>16 <b>today, not one, that is completely without</b></p> <p>17 <b>some degree of violation. So they all --</b></p> <p>18 <b>well, not all -- but many of them make best</b></p> <p>19 <b>efforts. And that's reflective in the SMS</b></p> <p>20 <b>data that is offered on the motor carrier</b></p> <p>21 <b>where it clearly states that Heartland --</b></p> <p>22 <b>they have -- they have an exceptional --</b></p> <p>23 <b>the drivers are just -- I mean, they</b></p>	<p>Page 144</p> <p>1 <b>get some violations. It's going to happen.</b></p> <p>2 <b>But that's why they go by percentages.</b></p> <p>3 <b>And it's a 24-month look back on the</b></p> <p>4 <b>SMS. They look back -- they look back</b></p> <p>5 <b>24 months to determine violations of</b></p> <p>6 <b>drivers, violations of equipment. And</b></p> <p>7 <b>their record -- their percentages are very,</b></p> <p>8 <b>very good.</b></p> <p>9 Q. Okay. If you will look going back to page</p> <p>10 28 of your report, under references, the</p> <p>11 second bullet point is Weather Underground</p> <p>12 history.</p> <p>13 <b>A. Yes. We always look at that. It could be</b></p> <p>14 <b>sometimes significant; sometimes it's not.</b></p> <p>15 <b>But not significant here because we didn't</b></p> <p>16 <b>really post anything on it. But we're just</b></p> <p>17 <b>giving you -- just letting you know that</b></p> <p>18 <b>we -- we look up Weather Underground</b></p> <p>19 <b>history on every case.</b></p> <p>20 Q. Okay. So you looked at it, but it didn't</p> <p>21 necessary impact your opinions that are</p> <p>22 contained in your report?</p> <p>23 <b>A. No, no, no. It wouldn't affect our</b></p>

<p>Page 145</p> <p>1 <b>opinions at all.</b></p> <p>2 MS. BAUGH: All right. If we can</p> <p>3 please take about a</p> <p>4 five-minute break.</p> <p>5 THE WITNESS: Sure.</p> <p>6 MS. DYE: Hey, just a reminder</p> <p>7 that he has a cutoff in ten</p> <p>8 minutes.</p> <p>9 MS. BAUGH: So it's 5 Eastern?</p> <p>10 MS. DYE: Yeah.</p> <p>11 THE WITNESS: 5 Eastern, correct.</p> <p>12 MS. BAUGH: Okay. Then let's make</p> <p>13 it a three-minute break.</p> <p>14 HE VIDEOGRAPHER: We are off the</p> <p>15 record. The time is 3:50 p.m.</p> <p>16 (A recess was taken.)</p> <p>17 THE VIDEOGRAPHER: We are back on</p> <p>18 the record. The time is</p> <p>19 3:54 p.m.</p> <p>20 MS. BAUGH: All right.</p> <p>21 Mr. Turner, I do not have</p> <p>22 further questions for you here</p> <p>23 today. I reserve the right</p>	<p>Page 147</p> <p>1 EXAMINATION</p> <p>2 BY MS. DYE:</p> <p>3 Q. I'm going to try to make this very, very</p> <p>4 fast. But I'm going to share my screen</p> <p>5 really quickly with you. Give me just a</p> <p>6 second.</p> <p>7 And I am going to mark this as</p> <p>8 Plaintiff's Exhibit 1. This is -- what I'm</p> <p>9 showing you -- let me know -- can you see</p> <p>10 that on your screen?</p> <p>11 <b>A. I do.</b></p> <p>12 (Plaintiff's Exhibit 1 was marked</p> <p>13 for identification.)</p> <p>14 Q. Okay. This is Heartland's Responses to</p> <p>15 Defendant Knauf's First Interrogatory</p> <p>16 Requests in this case.</p> <p>17 <b>A. Ma'am, could you make it a little bit</b></p> <p>18 <b>bigger by chance?</b></p> <p>19 Q. I sure can.</p> <p>20 <b>A. Yes. Thank you.</b></p> <p>21 Q. How's that?</p> <p>22 <b>A. That's good. Thank you.</b></p> <p>23 Q. All right. And I clicked it out just to</p>
<p>Page 146</p> <p>1 for us to ask you any</p> <p>2 questions at any further</p> <p>3 hearing or trial on this</p> <p>4 matter, of course. But for</p> <p>5 today, subject to any</p> <p>6 questions by plaintiff's</p> <p>7 counsel, I don't have any</p> <p>8 further questions.</p> <p>9 THE WITNESS: Sure, ma'am. Thank</p> <p>10 you. And I also want to</p> <p>11 reserve that if -- I</p> <p>12 understand there's more</p> <p>13 depositions being taken or</p> <p>14 have been taken just recently</p> <p>15 since the date of this report,</p> <p>16 so I may have to amend or</p> <p>17 supplement this report.</p> <p>18 MS. BAUGH: Okay. Victoria, did</p> <p>19 you have any questions?</p> <p>20 MS. DYE: I do. I didn't know if</p> <p>21 Pat had some.</p> <p>22 MR. SEFTON: No, I don't.</p> <p>23 MS. DYE: Okay. Great.</p>	<p>Page 148</p> <p>1 get quickly to the places I want to go.</p> <p>2 But in number 5, Knauf asked Heartland</p> <p>3 to identify Heartland's policies, training,</p> <p>4 or best practices relating to checking the</p> <p>5 security of loads.</p> <p>6 And in the response, in part, Heartland</p> <p>7 said that regarding Knauf shipments, the</p> <p>8 routes or assignments are contactless for</p> <p>9 Heartland drivers. In other words, the</p> <p>10 onus for loading a trailer safely and</p> <p>11 responsibly and for securing that load</p> <p>12 falls to Knauf.</p> <p>13 My question here very briefly is,</p> <p>14 number one -- well, before I ask my</p> <p>15 question, let me back up and ask you this:</p> <p>16 You have been working in the commercial</p> <p>17 motor vehicle trucking industry for more</p> <p>18 than 30 years. Is that correct?</p> <p>19 <b>A. That's correct.</b></p> <p>20 Q. And the testimony that you've given today</p> <p>21 and the opinions that are identified and</p> <p>22 described and listed out in your written</p> <p>23 report, as you've mentioned, were, of</p>



<p>Page 149</p> <p>1 course, based on all of the evidence that</p> <p>2 was provided to you to review in this case;</p> <p>3 correct?</p> <p>4 <b>A. That's correct.</b></p> <p>5 Q. And you view that evidence -- am I correct</p> <p>6 in saying that you view all of that</p> <p>7 evidence and formulate these opinions based</p> <p>8 upon your more than 30 years of background,</p> <p>9 training, and experience in the field of</p> <p>10 commercial motor vehicles?</p> <p>11 <b>A. Yes, ma'am.</b></p> <p>12 MS. BAUGH: Objection to form.</p> <p>13 <b>A. Yes, ma'am. And I hate to say it, but I'm</b></p> <p>14 <b>almost coming on 40 years, so ...</b></p> <p>15 Q. Okay. So, in other words, you've got --</p> <p>16 you have a lot of experience in the field</p> <p>17 of trucking and commercial motor vehicles;</p> <p>18 correct?</p> <p>19 <b>A. Yes, ma'am. Yes, ma'am.</b></p> <p>20 Q. All right. And obviously we've talked</p> <p>21 about the Federal Motor Carrier Safety</p> <p>22 Regulations, and those are guidelines and</p> <p>23 rules that govern this industry; correct?</p>	<p>Page 151</p> <p>1 <b>known as in the trucking industry more of</b></p> <p>2 <b>the term no-touch freight. So the driver</b></p> <p>3 <b>has no touch. In other words, he just</b></p> <p>4 <b>doesn't touch it, doesn't touch the</b></p> <p>5 <b>securement, and they leave that to the</b></p> <p>6 <b>shipper, whoever is loading the CMV.</b></p> <p>7 Q. Okay. And I think you mentioned this</p> <p>8 earlier, but is load securement a known</p> <p>9 safety issue in this world of shipping and</p> <p>10 commercial motor vehicle carrying of goods?</p> <p>11 <b>A. It's not just a known issue. It's a</b></p> <p>12 <b>paramount issue.</b></p> <p>13 Q. Okay. Would this in your opinion, based on</p> <p>14 your background, training, experience in</p> <p>15 this world of trucking -- in your opinion</p> <p>16 would the fact that Heartland says the onus</p> <p>17 is on Knauf to properly secure the</p> <p>18 trailers -- would that be something that in</p> <p>19 your opinion would have been a known</p> <p>20 industry standard when we're dealing with</p> <p>21 sealed loads that the driver does not have</p> <p>22 the opportunity to inspect?</p> <p>23 MS. BAUGH: Objection to form.</p>
<p>Page 150</p> <p>1 <b>A. Correct.</b></p> <p>2 Q. Outside of those written guidelines,</p> <p>3 though, there are things such as what Knauf</p> <p>4 references here as best practices that may</p> <p>5 not necessarily be regulation in the</p> <p>6 federal regs; right?</p> <p>7 <b>A. Correct.</b></p> <p>8 MS. BAUGH: Objection to form.</p> <p>9 Q. It could be -- it could be a practice that</p> <p>10 is just something that is done within the</p> <p>11 industry as a whole. Is that fair?</p> <p>12 MS. BAUGH: Objection to form.</p> <p>13 <b>A. That's correct.</b></p> <p>14 Q. Okay. Thank you.</p> <p>15 All right. So getting back to my</p> <p>16 question here, when they ask about the best</p> <p>17 practices and Heartland made this response</p> <p>18 that we just read over about the onus being</p> <p>19 on Knauf, do you agree with, first of all,</p> <p>20 the response that Heartland put here?</p> <p>21 <b>A. Yes.</b></p> <p>22 MS. BAUGH: Objection to form.</p> <p>23 <b>A. It's called contactless, and it's also</b></p>	<p>Page 152</p> <p>1 <b>A. Frequently I would say, yes. Is it an</b></p> <p>2 <b>end-all, be-all, no, but frequently, yes.</b></p> <p>3 Q. Okay. Let me switch my screen here. Give</p> <p>4 me just a moment.</p> <p>5 (Plaintiff's Exhibit 2 was marked</p> <p>6 for identification.)</p> <p>7 Q. All right. What I'm showing here and I'm</p> <p>8 marking as Plaintiff's Exhibit 2 is</p> <p>9 Heartland's responses to discovery that the</p> <p>10 plaintiff issued in this case.</p> <p>11 <b>A. Can you make that a little --</b></p> <p>12 Q. Yeah. Let me scoot my screen back over.</p> <p>13 Sorry.</p> <p>14 <b>A. There we go.</b></p> <p>15 Q. So this is just, once again -- in number 4</p> <p>16 we asked for the identify of all the rules,</p> <p>17 regulations, and standards concerning when</p> <p>18 safety devices should be used, and</p> <p>19 Heartland's response was: Heartland does</p> <p>20 not load the trailer or secure the loads.</p> <p>21 That responsibility falls to the shipper of</p> <p>22 the product.</p> <p>23 Is it common practice within the</p>

<p>Page 153</p> <p>1 industry, based on your background, 2 training, and experience, that a carrier 3 would expect or require a shipper to ensure 4 proper load securement when dealing with a 5 sealed load that the driver does not have 6 the opportunity to watch being loaded or 7 look at before the container is sealed? 8 MS. BAUGH: Objection to form. 9 <b>A. Yes. It's an industry practice, and it's</b> 10 <b>pretty much a widely known practice.</b> 11 Q. Okay. I'm going to stop my share here 12 really quickly. 13 You were asked earlier about Mr. Ross' 14 practice of opening the doors and whether 15 or not he was given training on opening the 16 doors, and I think there was some 17 discussion about which hand was on which 18 door. But my question is this: Whether he 19 had his left hand or his right hand on the 20 door, was walking backward or forward when 21 opening the door, in your opinion would any 22 of that have mattered at all if the load 23 had been properly secured?</p>	<p>Page 155</p> <p>1 Q. It's somewhat hard to read because of the 2 way that this document was copied, but I 3 tried to -- I tried to make it as big as I 4 can here. Have you seen this document, 5 these complaints? 6 <b>A. I believe so, yes.</b> 7 Q. And this, I will represent, is a list of 8 complaints specifically with relation to 9 the Lanett, Alabama, plant where Mr. Ross 10 picked up his load. And it is showing a 11 list of complaints, it looks like, starting 12 in 2019 and going all the way to the date 13 of the incident involving Mr. Ross. 14 And these are all complaints dealing 15 with load shifting, with load-securment 16 issues, with product falling out of the 17 truck, as you can see there, notations that 18 this is a safety concern here. Customer 19 has a safety concern as well as frustration 20 with ongoing problems. 21 This, again, was something that you 22 reviewed in this case; correct? 23 <b>A. Yes, it's something we reviewed.</b></p>
<p>Page 154</p> <p>1 <b>A. That's been my point all along. Correct.</b> 2 <b>I mean, if Knauf had taken the opportunity</b> 3 <b>to either accept the straps from Mr. Ross</b> 4 <b>or apply their own straps, this incident</b> 5 <b>doesn't happen.</b> 6 Q. All right. You were also asked about -- 7 <b>A. To a high degree of probability.</b> 8 Q. Okay. Sorry about that. And I'm sorry I'm 9 jumping around. I'm trying to make our 10 time here -- I've got just a couple more. 11 You were asked about testimony that you 12 included in your report from Cameron Ashley 13 employees about previous issues with cargo 14 falling off of these trucks, and there were 15 some questions put to you about whether or 16 not the Cameron Ashley -- anybody at that 17 company had ever communicated those 18 concerns to Knauf. 19 I'm going to show you the last thing 20 I'm going to mark, which is Plaintiff's 21 Exhibit 3. Give me just a minute. 22 (Plaintiff's Exhibit 3 was marked 23 for identification.)</p>	<p>Page 156</p> <p>1 MS. BAUGH: Objection to form. 2 MS. DYE: What's the objection to 3 form? 4 <b>A. Yeah. I said, yes, it's something that we</b> 5 <b>looked at and we took it under advisement</b> 6 <b>as we do everything.</b> 7 Q. Okay. And a couple of things I'm getting 8 at here: Number one, when you referenced 9 earlier -- I think you said 24 complaints. 10 Is this the document you were talking about 11 that you reviewed? 12 <b>A. Yes.</b> 13 Q. Okay. And in your opinion, based on your 14 background, training, and experience, these 15 previous complaints regarding issues -- 16 repeated issues with materials not being 17 properly secured -- excuse me -- in your 18 opinion, would that have put Knauf on 19 notice that there were issues with their 20 loaders not properly loading and/or 21 securing cargo? 22 MS. BAUGH: Objection to form. 23 <b>A. That goes along with my additional opinion</b></p>

<p>Page 157</p> <p>1 that I added into here where I</p> <p>2 referenced -- excuse me -- because of not</p> <p>3 only the testimony of Todd, McGrew, and</p> <p>4 Bjerke, but also those 24 complaints that I</p> <p>5 referenced.</p> <p>6 So you take the combination of those</p> <p>7 two together -- those four things together</p> <p>8 and you look and you can see it's a</p> <p>9 motor -- not a motor carrier -- but a</p> <p>10 shipper who wasn't taking safety seriously</p> <p>11 at all, and they just continued to send</p> <p>12 trucks out of their facility without</p> <p>13 securement according to Mr. Weldon</p> <p>14 because -- I don't remember the term that</p> <p>15 he used on the form -- the specific term</p> <p>16 that he used. But, you know, he just said</p> <p>17 he didn't -- it didn't warrant it or</p> <p>18 something like that.</p> <p>19 So that's where I came up with that</p> <p>20 additional opinion that Knauf was clearly</p> <p>21 put on notice based on what -- the document</p> <p>22 you just showed and based on the testimony</p> <p>23 of those three individuals. They were put</p>	<p>Page 159</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2</p> <p>3 I, Tracie S. Blackwell, a Certified Court</p> <p>4 Reporter in and for the State of Alabama, do hereby</p> <p>5 certify:</p> <p>6 That the foregoing witness was by me duly</p> <p>7 sworn;</p> <p>8 That the deposition was then taken before me</p> <p>9 at the time and place herein set forth;</p> <p>10 That the foregoing is a complete and correct</p> <p>11 transcript of the said proceedings;</p> <p>12 That the reading and signing of this</p> <p>13 transcript is hereby waived;</p> <p>14 I further certify that I am neither of kin nor</p> <p>15 counsel for any of the parties set out herein and</p> <p>16 in no way interested in the results thereof.</p> <p>17 Done this 5th day of August 2024.</p> <p>18</p> <p>19 </p> <p>20</p> <p>21 Tracie S. Blackwell, CCR, RPR</p> <p>22 ACCR No. 294</p> <p>23 Expiration date: 9-30-2024</p> <p>Certified Court Reporter</p> <p>and Commissioner for the State</p> <p>of Alabama at Large</p>
<p>Page 158</p> <p>1 on notice, but they just kept on business</p> <p>2 as usual.</p> <p>3 Q. Okay. And this seems like a common-sense</p> <p>4 question, but it's the last question I have</p> <p>5 for you.</p> <p>6 Based on your more than 30 years of</p> <p>7 experience working in the trucking</p> <p>8 industry, would you agree that any measure</p> <p>9 of load securement is safer than the total</p> <p>10 absence of any load-securement measures?</p> <p>11 A. Of course. Of course. You know, even if</p> <p>12 they used -- any degree of securement, but</p> <p>13 they just refused to. It was just, like I</p> <p>14 said, business as usual.</p> <p>15 MS. DYE: I believe that is all</p> <p>16 that I have.</p> <p>17 MR. GRAVES: No questions from me.</p> <p>18 Thank you.</p> <p>19 THE VIDEOGRAPHER: This concludes</p> <p>20 our deposition. The time is</p> <p>21 4:06 p.m.</p> <p>22 (Deposition concluded at</p> <p>23 approximately 4:06 p.m.)</p>	